

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 - - - - - x

5 In the Matter of:

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7 CELSIUS NETWORK LLC,

8

9 Debtor.

10 - - - - - x

11 Adv. Case No. 24-03994-mg

12 - - - - - x

13 MEGHJI,

14 Plaintiff,

15 v.

16 WALLET OWNER 0X10F546A6F4D20D91E5A8506124384759C9F

17 Defendant.

18 - - - - - x

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1 Adv. Case No. 24-04004-mg

2 - - - - - x

3 MEGHJI,

4 Plaintiff,

5 v.

6 CASTEL, et al.,

7 Defendants.

8 - - - - - x

9 Adv. Case No. 24-04005-mg

10 - - - - - x

11 MEGHJI,

12 Plaintiff,

13 v.

14 WALLET OWNER 0xdbc13e67f678cc00591920cece4dca6322a

15 Defendant.

16 - - - - - x

17 Adv. Case No. 24-04024-mg

18 - - - - - x

19 CELSIUS CUSTOMER PREFERENCE ACTIONS, et al.,

20 Plaintiffs,

21 v.

22 VALENZUELA, et al.,

23 Defendants.

24 - - - - - x

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1 United States Bankruptcy Court
2 One Bowling Green
3 New York, NY 10004
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5 October 8, 2024
6 2:01 p.m.
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21 B E F O R E :

22 HON. MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: JONATHAN

1 HEARING re Status Update on Distributions (Doc##7718, 7729,
2 7737)

3
4 HEARING re Status Update on Preference Settlements (Doc
5 7689) .

6
7 HEARING re Hearing using Zoom for Government RE: The
8 Litigation Administrators First Omnibus Objection to Certain
9 Insufficient Document Claims. (Doc# 7639, 7722, 7732, 7733)

10
11 HEARING re Hearing Using Zoom for Government RE: The
12 Litigation Administrators Motion to Enforce Customer
13 Preference Claims Settlement Agreements Against Certain
14 Breaching Parties. (Doc# 7709, 7714, 7722, 7731, 7732)

15
16 HEARING re Hearing Using Zoom for Government RE: The
17 Litigation Administrator to Redact and File Under Seal
18 Certain Confidential Terms of Customer Preference Claims
19 Settlement Agreements Against Certain Breaching Parties
20 (related Doc## 7710, 7709, 7714, 7722)

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1 Adversary proceeding: 24-03994-mg MEGHJI v. WALLET OWNER
2 0X10F546A6F4D20D91E5A8506124384759C9F

3
4 HEARING re Hearing Using Zoom for Government RE: Motion for
5 Alternative Service. (Doc ## 11, 12, 15, 16, 17)

6
7
8 Adversary proceeding: 24-04004-mg MEGHJI V. CASTEL et al

9
10 HEARING re Hearing Using Zoom for Government RE: Motion for
11 Alternative Service. (Doc ## 16, 17, 22 to 24)

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13
14 Adversary proceeding: 24-04005-mg MEGHJI v. WALLET OWNER
15 0xdbc13e67f678cc0091920cece4dca6322a

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17 HEARING re Hearing Using Zoom for Government RE: Motion for
18 Alternative Service. (Doc ## 11, 12, 15, 16, 17)

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Adversary proceeding: 24-04024-mg Celsius Customer

Preference actions et al v. Valenzuela et al

HEARING re Hearing Using Zoom for Government RE: Revised

Motion for an Order Establishing Streamlined Procedures

Governing Avoidance Actions Pursuant to Sections 502, 547,

and 550 of the Bankruptcy Code. (Doc## 3, 5, 6, 9 to 16, 21,

22)

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1 P R O C E E D I N G S

2 THE COURT: Good afternoon, everyone. Obviously,
3 we are here at Celsius, 22-10964. I have the agenda in
4 front of me. Let's begin with the status update on
5 distributions.

6 MR. KWASTENIET: Good afternoon, Your Honor. It's
7 Ross Kwasteniet from Kirkland & Ellis on behalf of the post-
8 effective-date debtors. Can you hear me okay?

9 THE COURT: Yes, I can.

10 MR. KWASTENIET: Okay, great. And at the
11 beginning, Your Honor, as we've done with prior hearings, I
12 would like to just request that my colleague, Gabrielle
13 Abbe, be given co-hosting privileges so she can share the
14 slide presentation.

15 We filed it on the docket last night. It's at
16 Docket Number 7737. It's a short PowerPoint presentation
17 that summarizes the progress that we've made with respect to
18 distributions.

19 THE COURT: All right. It's on the screen. Go
20 ahead.

21 MR. KWASTENIET: Okay, great. Thank you, Your
22 Honor.

23 Your Honor, the headline for this month is that we
24 continue to make steady and incremental progress with
25 respect to distributions. Out of a total amount of \$2.73

1 billion that's presently eligible to be distributed, we have
2 distributed successfully approximately \$2.57 billion, or
3 about 94 percent of that total.

4 Your Honor, we are still chasing pockets of
5 creditors where we haven't gotten distributions
6 successfully. The cash distributions have been a little
7 slower than we would have liked, but that in part is due to
8 the fact that we've got a large number of individuals who
9 all have to take some action. They have to either send in
10 wire transfer instructions or they have to receive and then
11 cash a check. And we're running into a little bit of the
12 law of large number, Your Honor, where the overwhelming
13 amount of the value has gone out. And so what we're doing
14 now is chasing and trying to complete the distribution
15 process to a larger number of creditors who are owed a
16 smaller amount.

17 And so it's challenging by nature, but we are
18 encouraged by the fact that the distribution numbers,
19 percentages continue to tick up month over month. And we
20 are also undertaking efforts, we're communicating with folks
21 on a weekly basis. We are trying to migrate people. If
22 they're unsuccessful with PayPal, we're trying to migrate
23 them to Coinbase. If they're unsuccessful at Coinbase,
24 we're trying to get them a cash distribution. We've been
25 working to build out the Hyperwallet and had been encouraged

1 with the initial results on Hyperwallet.

2 So, Your Honor, we are doing everything we can to
3 continue to manage these numbers upward and we are pleased
4 with the progress that we've made over the last month.

5 So I'll pause there and see if Your Honor has any
6 questions about the distributions.

7 THE COURT: Let me make a brief comment. From
8 time to time the Court has received typically email
9 communications from creditors. I've had my law clerks
10 forward them on. Some of them have shown that either your
11 firm or White & Case has received copies, sometimes not.
12 We've forwarded them on. They would be -- there's nothing
13 for the Court to decide with those. They typically involve
14 creditors who at least assert that they have not received
15 their distributions and have not received communications.
16 We've usually forwarded them -- as I say, we've forwarded
17 them on. And in many of the instances we've ever heard that
18 the problem has been resolved.

19 So could you just address that? I'm sure you're
20 getting -- your firm and White & Case are both getting those
21 communications, some of them directly -- how you're dealing
22 with them when you do receive them.

23 MR. KWASTENIET: Yes. Absolutely, Your Honor. So
24 we've got a subset of the team who worked on the Chapter 11
25 cases continue to be engaged and dealing with the

1 distribution issues. And so once we receive a
2 communication, we obviously read it carefully. We then
3 reach out to the company to get background information on
4 who the creditor is, what type of claim they have, what
5 class they're in. And then we'll reach out to the creditor
6 either electronically or we'll speak on the phone to try to
7 understand what steps they have gone through. Once we
8 understand what class they're in and what they're supposed
9 to get and how that's supposed to work depending on which
10 distribution partner it is, we then will reach out to the
11 creditor to walk through what steps they've taken. And
12 often it's a simple failure in communication or some bit of
13 information that had to be provided, wasn't yet provided,
14 and we're often able to get to the bottom of it pretty
15 quickly.

16 THE COURT: So for the benefit of anyone who is
17 present at this hearing, who should they direct their
18 inquiries to with respect to problems with distributions?

19 MR. KWASTENIET: People can send inquiries to me.
20 My last name is Kwasteniet, RossKwasteniet@Kirkland.com, or
21 to Mr. Koenig, Chris Koenig. And Chris and I coordinate on
22 a daily basis with the company about distribution inquiries.
23 And both of our email addresses are in the Kirkland
24 signature block on all the pleadings and it's on the Stretto
25 website.

1 THE COURT: All right. Thank you very much, Mr.
2 Kwasteniet. Anything else you want to add?

3 MR. KWASTENIET: No, that's it from us, Your
4 Honor.

5 THE COURT: All right. Let's move on to the
6 status update on preference settlements. Who is going to
7 take that?

8 MR. HERSHEY: Yes, Your Honor. Good afternoon.
9 Sam Hershey from White & Case for the Celsius litigation
10 administrator.

11 At the August hearing, Your Honor instructed us to
12 file a notice with a deadline for parties to accept the
13 settlement offer. And we did so. We filed that notice on
14 September 13th with a deadline one week from today of
15 October 15th. We scheduled that deadline significantly far
16 out from when we filed the notice for two reasons. One was
17 to give parties who may not have known about the settlement
18 offer sufficient time to consider it. The other was to give
19 us the chance to raise the matter at this hearing so that
20 parties will hear about it here as well and will have the
21 opportunity to consider it before the offer lapses on the
22 15th.

23 I do want to note that just because the settlement
24 offer is lapsing does not mean that our settlement efforts
25 are ending. We actually are entering what we hope will be a

1 very productive period of voluntary mediations. In our
2 proposed order we had suggested a 120-day moratorium on
3 litigation for those mediations to play out. And I am
4 pleased to report that many defendants are reacting
5 positively to that suggestion.

6 We have a mediation scheduled for later this
7 month, on October 29th with a group of non U.S. defendants.
8 We've been in talks with Ms. Kovsky and Mr. Besikof
9 regarding mediations with their defendants, or their clients
10 I should perhaps say who, as Your Honor knows, number in the
11 hundreds. And so we are using this time productively and we
12 intend to continue our settlement efforts even after the
13 settlement offer is no longer generally available.

14 THE COURT: All right. Thank you. Anything else
15 you would like to add?

16 MR. HERSHEY: No, Your Honor. Thank you very
17 much.

18 THE COURT: All right. Thank you.

19 All right. Let's move on on the agenda then.

20 Listed in uncontested matters is the first claim objection.

21 MR. GORSHICH: Good afternoon, Your Honor. Ron
22 Gorshich with White & Case on behalf of the litigation
23 administrator. I'll be handling the first and second claim
24 objection.

25 THE COURT: Okay. Please go ahead.

1 MR. GORSHICH: As you can see, Your Honor, we
2 filed a Certificate of No Objection. We did not receive any
3 formal responses to either the first or second claim
4 objection. We did indicate on the agenda that we have
5 withdrawn the motion as to certain proofs of claim.

6 Initially, as you saw in the CNO, we did that
7 because the proofs of claim did not have any address or
8 contact information at all listed. And so we were going to
9 have to take them off and deal with that with alternative
10 service. However, subsequently we determined that all of
11 those proofs of claim were late-filed and therefore already
12 expunged under the plan. So the motion is actually moot as
13 to those.

14 So unless Your Honor has any questions or we have
15 any other changes, we'll provide an updated order with
16 schedules for the first and second omnibus objection
17 removing all of the claims indicated on the agenda.

18 THE COURT: So there were -- as I understand it
19 there were a hundred claims that are identified -- that the
20 first omnibus objection applies to.

21 MR. GORSHICH: Correct, Your Honor.

22 THE COURT: As to 96 or 100, I don't have a
23 question.

24 MR. GORSHICH: Okay.

25 THE COURT: As to four of the hundred, it was less

1 clear to me whether the claims -- because some of those
2 proofs of claim were filed prior to the bar date.

3 MR. GORSHICH: Yes, Your Honor.

4 THE COURT: Well, I guess they were all filed
5 before the bar date. Some were filed before the bar date
6 order was entered. And some of those claims did include
7 some documentation, some of which we are not able -- when I
8 say we, my chambers have not been able to open and see. Let
9 me specifically identify which ones.

10 The claim of Maggie Berg, B-e-r-g. The POC was
11 filed on February 11th, 2023 before any of the bar dates.
12 The Claimant provides a dollar amount of her claim, \$250.
13 And the proof of claim seems to have been substantially
14 filled out. It's unclear whether any supporting
15 documentation was filed as part of that claim.

16 And unless you are prepared to -- I'll identify
17 the four that I have questions about. As to those, I will
18 give you a chance to address them. What I am inclined to do
19 is enter an order as to 96 of the claims expunging the
20 claims, and as to four ask for some further information from
21 the Debtors. There were no responses filed on any of these.

22 So the first is, as I said, the claim of Maggie
23 Berg.

24 The second is the claim of Lena Chishti, C-h-i-s-
25 h-t-i. And the proof of claim was filed on January 21,

1 2023. Again, the Claimant provides a dollar amount, \$250.
2 The claim form was substantially filled out. One supporting
3 document was filed, but it's inaccessible to us.

4 The third one is the claim of Cruz Marlene
5 (indiscernible), I'll spell the last name, C-o-v-a-r-r-u-b-
6 i-a-s. The proof of claim was filed on January 25th, 2023.
7 The Claimant also provides a dollar amount, the same \$250.
8 The proof of claim was substantially filled out. There was
9 some supporting documents uploaded. I haven't been able to
10 access it.

11 The fourth of these hundred claims is the claim of
12 John Dehass, D-e-h-a-s-s. The proof of claim was filed on
13 December 16th, 2022 against the \$250 claim. And I really
14 can't tell whether there was any supporting documents or
15 not.

16 So what I would like to do -- well, I'll give you
17 a chance if you want to address those four now. Otherwise,
18 I'll give you a chance to do it after. I'm not prepared,
19 unless I have a better understanding with respect to those
20 four, whether there really is sufficient documentation
21 claims or not.

22 And as to the other 96, yes, we are prepared to
23 enter an order sustaining the objection as to the other 96.
24 I don't know whether you want to address the four or not.

25 MR. GORSHICH: The only comment I could make on

1 those four is that in addition to being insufficient
2 documentation, the basis for these are also books and
3 records objections. We reviewed each of these and reviewed
4 the Debtor's books and records and determined that these
5 claimants did not appear to have any amount owed to them in
6 the books and records. If they had any kind of valid
7 account, they would have been included on a subsequent
8 omnibus objection that we were seeking to reduce and allow.
9 And you'll hear those at the next omnibus hearing. But for
10 these, none of these Claimants appear in the Debtor's books
11 and records to have any valid claim in any amount.

12 If you would prefer, we are happy to pull --

13 THE COURT: Well, let me interrupt.

14 MR. GORSHICH: Sorry, go ahead.

15 THE COURT: Because some of them seem to attach
16 something that we weren't -- my chambers was not able to
17 access. So here's what I would like to do. Yes, and I see
18 that you've also indicated that the books and records didn't
19 reflect anything on these claims. But I don't know what
20 they attached.

21 So we'll go ahead and enter an order sustaining
22 the objection as to the other 96. As to those four, I'm
23 going to deny -- overrule the objection without prejudice.
24 I don't think you have to do a lot more on it, but I just
25 want to be satisfied as to when it was.

1 I know you said that there was nothing in the
2 books and records, but I -- unless you can tell me what it
3 is they attached or that we have not been able to access.

4 MR. GORSHICH: I could pull them --

5 THE COURT: Why don't we do this? Rather than do
6 it now, I'll sustain the objection as to the 96. I will
7 overrule the objection without prejudice as to the four.
8 You can bring those back on and just provide a clear
9 explanation to me. Okay?

10 MR. GORSHICH: Explaining what they attached so
11 you can specifically --

12 THE COURT: Yeah. I would like to know what it is
13 that they attached. You know, they attached something.
14 They completed proofs of claim.

15 MR. GORSHICH: Okay.

16 THE COURT: The fact that they're not -- you know,
17 if someone completes a proof of claim, the fact that you
18 don't reflect it in your books and records doesn't
19 automatically mean that the objection gets sustained.

20 MR. GORSHICH: Sure. Understood. I mean, if they
21 have valid evidence of -- then they have to make a prima
22 facie case, right?

23 THE COURT: Yes. Yes.

24 MR. GORSHICH: And they don't -- okay. Sure.

25 Happy to explain what they attached. Would you like them

1 attached to a subsequent objection or lodged with the Court
2 if you're not able to see them on your end?

3 CLERK: Judge?

4 MR. GORSHICH: Did the Court freeze?

5 CLERK: I think he might have frozen. Let me
6 contact him.

7 CLERK: The Judge is -- hi, Judge.

8 THE COURT: You are able to see and hear me now,
9 Deanna?

10 CLERK: Yes, Judge.

11 THE COURT: Okay. I apologize to everybody. I
12 had some technical problems. Zoom crashed, but I am back on
13 now.

14 I wanted to move on to the second claim objection.

15 MR. GORSHICH: Your Honor, I am not sure if you
16 heard my last question. I was asking if it would be
17 convenient for the Court, we would also be happy to send
18 complete copies of those four claims to chambers with the
19 next objection to make sure you saw the documents.

20 THE COURT: Absolutely. I would appreciate it
21 very much.

22 MR. GORSHICH: Okay, will do.

23 THE COURT: All right. Let's move on to the
24 second claim objection.

25 MR. GORSHICH: Your Honor, exactly the same

1 process with the second claim objection. We had informal
2 responses, reached out, and they were not resolved. And
3 then we subsequently withdrew them on the agenda. Did you
4 have any questions on those or other claims that we should
5 remove to discuss subsequently?

6 THE COURT: Let me -- give me a moment.

7 Just briefly describe what the second claim
8 objection covers.

9 MR. GORSHICH: Your Honor, it's exactly the same
10 as the first. We split them up only because of the 250
11 limit.

12 THE COURT: Right.

13 MR. GORSHICH: And so these are also insufficient
14 documentation in books and records. We went through each of
15 these, determined that the proofs of claim didn't represent
16 a valid claim, and the books and records didn't show any
17 amounts owed to any of these creditors. And again, no
18 formal responses were filed.

19 THE COURT: Does anybody else wish to be heard
20 with respect to the second omnibus objection claim?

21 Those objections are sustained.

22 MR. GORSHICH: Thank you, Your Honor.

23 THE COURT: Okay. All right. Let's go on to the
24 motion to enforce the settlement.

25 MR. HERSHEY: Yes, Your Honor. Sam Hershey again

1 from White & Case for the litigation administrator.

2 Your Honor, at the last hearing my colleague,
3 Lucas Curtis, explained that we would be filing this motion.
4 We did so. We did not receive any objections to the motion.
5 I will note that the motion, as we hoped it would, spurred
6 some parties to action. Originally there were 97
7 individuals against whom we were seeking to enforce the
8 settlement agreements. Ten have engaged with us and have
9 resolved their breach. And so we submitted a revised list
10 of parties subject to the proposed order, which is now 87
11 parties instead of 97 parties.

12 I will note as well that we filed the motion under
13 seal and we have a motion to seal on the agenda. We sealed
14 personal identifying information as well as details of
15 parties' specific settlements as we are concerned that if
16 those details become public, it could impair our ability to
17 settle going forward.

18 THE COURT: Give me a moment, Mr. Hershey.

19 MR. HERSHEY: Of course, Your Honor.

20 THE COURT: Let's back up a minute. I want to ask
21 a more fundamental question. What is it in the plan or in
22 any order entered by the Court that authorizes the plan
23 administrator to settle claims without approval of the Court
24 --

25 MR. HERSHEY: Your Honor, I --

1 THE COURT: Hold on.

2 MR. HERSHEY: Sure. Of course, Your Honor.

3 THE COURT: And in some cases, many larger cases,
4 I've entered orders that provide authority for I'll call it
5 the plaintiff to settle claims without court approval within
6 certain dollar parameters. But there's usually been
7 something in the plan or the order confirming the plan or in
8 some other document that provides the authority. And I'm
9 just not sure what if anything there is at this point.

10 You're asking -- so you've made a motion to
11 enforce settlements. You say it's now 87. They're
12 contracts.

13 MR. HERSHEY: That's right, Your Honor.

14 THE COURT: They were entered into by the plan
15 administrator. And was I ever asked to approve those
16 settlements?

17 MR. HERSHEY: No, Your Honor. And let me -- just
18 a clarity for the record. It's the litigation administrator
19 who is entering into the settlement agreements. And Your
20 Honor is correct, we -- under the authority in the plan, we
21 have not asked Your Honor for approval. I am trying to get
22 the exact cite from the plan that gives us that authority.
23 And I might need to come back to Your Honor with that exact
24 cite. But is my understanding the plan provides that
25 authority.

1 THE COURT: So I've had my law clerks on the hunt
2 for the provision. And Article 7, Section C, ECF 4289 at
3 Page 76 provides the litigation administrator with the sole
4 authority to -- this is Romanette (b), settle or compromise
5 any disputed claim without any further notice to or action
6 order or approval by the bankruptcy court. But that's
7 claims against the estate, not claims asserted against
8 anyone.

9 MR. HERSHEY: So, Your Honor --

10 THE COURT: Let me go on. Okay?

11 MR. HERSHEY: Of course, Your Honor.

12 THE COURT: Just bear with me, okay?

13 MR. HERSHEY: I will, Your Honor. Of course.

14 THE COURT: So what also potentially bears on this
15 issue is Article 8, viii(C). And it breaks down withdrawal
16 preference exposure less than \$100,000 and over \$100,000.
17 And it basically released claims for anybody who voted in
18 favor of the plan with preference exposure, withdrawal
19 preference exposure less than \$100,000. And for those above
20 -- with preference exposure above \$100,000, if they voted in
21 favor of the plan, doesn't opt out under the releases under
22 the plan, and provides the Debtor or litigation
23 administrator as applicable with cash equal to 27.5 percent
24 of such accountholder's withdrawal preference exposure no
25 later than 14 days prior to the effective date, that's the

1 proof as well.

2 But I haven't found -- but that doesn't fit what I
3 -- well, I don't know. Does that fit any of the settlements
4 which I am being asked to enforce now?

5 MR. HERSHEY: Your Honor, I think the provision
6 that covers these settlements is Article 4, Section L. And
7 I can -- the docket cite, it's the notice of the revised
8 proof of -- excuse me, the notice of revised plan that was
9 filed on January 29th of this year. It's Docket Number 4289
10 and Page 57, PDF 57 is what I'm looking at. And I can just
11 -- I will read it to Your Honor --

12 THE COURT: Go ahead. Read it to me.

13 MR. HERSHEY: So Section L, the header is
14 Litigation Administrators, Litigation Oversight Committee,
15 and Contributing Claims. And it says, "On the effective
16 date, one or more litigation administrators will be
17 appointed to prosecute, settle, or otherwise resolve any
18 remaining disputed claim." Which is what Your Honor spoke
19 about. And then "(Including any related causes of action
20 that are not released, waived, settled, or compromised
21 pursuant to this plan.) the recovery causes of action and
22 the contributing claims," and it goes from there.

23 So I think -- I believe -- I have to look at the
24 defined terms. I think the recovery causes of action
25 relates to our avoidance action seeking to recover these

1 preference liabilities.

2 THE COURT: But the language you just read to me,
3 Mr. Hershey, didn't authorize -- yes, it authorized the
4 administrator to settle it, but does it authorize them to
5 settle it without approval of the Court?

6 MR. HERSHEY: Your Honor, perhaps it would make
7 sense -- I would request the opportunity to look into this
8 issue further. Because my assumption is there are other
9 provisions to the plan that would -- or the litigation
10 administrator agreement that might -- that the Court
11 approved that might provide that authority to do these
12 things without court approval.

13 So perhaps we can carry forward the motion and
14 we'll brief this issue.

15 THE COURT: We can. Let me -- I've got pages of
16 notes here that I'm going through.

17 It's not my intention to create problems for any
18 party here. But I've got to follow what the law is. And it
19 may be that you'll provide me with authority that says post-
20 confirmation a plan administrator can go ahead and settle
21 the claims, estate claims without approval of the Court and
22 that 9019 doesn't apply, et cetera. Okay? I'll be
23 interested in hearing that.

24 MR. HERSHEY: Okay, Your Honor. Absolutely.

25 THE COURT: I'm still reading some notes. Okay?

1 MR. HERSHEY: Sure. Of course, Your Honor.

2 THE COURT: Certainly -- I read you a couple of
3 the provisions from the plan that dealt with -- you know,
4 that said yeah, you could settle it for 27.5 percent. I
5 don't know if the settlements fir that or not.

6 For me to be able to enforce the agreements, I
7 need to understand that, yes, the plan administrator had the
8 authority to enter into these contracts. That's what they
9 are, they're contracts. And enforce the terms. Okay. Let
10 me raise another issue. Give me a second.

11 So when I wrote notes to myself, Mr. Hershey, I
12 said do I have to conduct a 9019 analysis with respect to
13 each settlement. The settlements, the concluded agreements,
14 was the Court required to approve each settlement?
15 Sometimes Plaintiff was permitted to settle claims within
16 certain parameters without obtaining court approval. And I
17 looked at things like the plan or confirmation order or
18 something else.

19 So on the sealing, I understand what it is that
20 the -- the reasons that have been articulated for sealing
21 these settlements. But there are at least two cases, one by
22 me, one by Judge Lynch when he was sitting as a district
23 judge, that bear on this issue.

24 So my opinion in In re In re Oldco M Corp., 466
25 B.R. 234, 237-238 (Bankr. S.D.N.Y. 2012). That's my

1 opinion.

2 And I followed -- and in that decision I followed
3 the opinion by Judge Lynch when he was a district judge in
4 Geltzer v. Anderson Worldwide S.C., 2007 WL 273526 *4
5 (S.D.N.Y. Jan. 30, 2007).

6 Both involve settlements. Judge Lynch -- you can
7 read what he had to say. Essentially my takeaway is that
8 preserving a position of leverage and negotiation with
9 third-party claimants does not justify sealing court
10 records.

11 And in Oldco M which I wrote, there's a very
12 strong policy of public access to all court records. And an
13 important function of the court when it has to rule on 9019
14 motions, which I haven't been asked to do here, is do it in
15 a transparent way that the public and parties in interest
16 can review what the court did and see whether they agree,
17 disagree, whatever. Parties in interest may have a right to
18 appeal.

19 One of the things I said in Oldco was there's no
20 discernible public interest or interest of the bankruptcy
21 estates in -- and I'm quoting Judge Lynch, "Preserving
22 leverage as against other parties." Okay.

23 So, look, I am sensitive to this issue. I
24 understand you could potentially alter the settlement
25 dynamics. And it may be that there are other cases that I'm

1 not aware of, Mr. Hershey, with respect to the sealing
2 issue.

3 When I wrote Oldco, I had found Judge Lynch's
4 decision in Anderson Worldwide. And I can't say I explored
5 -- I'm sure I looked further and didn't find anything. But
6 let me say, whether this would be determinative or not, if
7 the litigation administrator had authority to settle claims
8 without approval of the bankruptcy court, if I didn't have
9 to rule on a 9019 motion, I could see the arguments why in
10 that circumstance if there was confidentiality provisions
11 regarding the settlement, that they be kept under seal under
12 Rule 1007, or Code Section 1007(b). I don't know. Again,
13 I'm not looking to create undue problems. I understand
14 we've got a situation here, we've got close to 2,500
15 preference actions.

16 Just bear with me a second.

17 And I certainly understand as a practical matter
18 that disclosing the terms of settlement in a handful of
19 settlements already been achieved could have an impact on
20 the dynamics, but I need some more set on that.

21 Ms. Kovsky, you 've got your hand raised. Let me
22 call on you.

23 MS. KOVSKY-APAP: Thank you, Your Honor. I just
24 wanted to raise an issue with respect to sealing. And to be
25 clear, I don't believe any of my clients are involved in

1 this particular motion. However, as Your Honor is aware,
2 Troutman represented hundreds of clients, many of whom have
3 already settled. And leaving aside whether or not the
4 Plaintiff was required to seek court authority, our
5 understanding and the representation made to us is that that
6 wasn't necessary, and my clients certainly did not want to
7 have their name or the terms of the settlement agreement
8 that they agreed to in the public record.

9 And this case has really shown us in a lot of ways
10 how the world has changed. And while, yes, transparency and
11 public information is critical to court cases to bankruptcy,
12 at the same time, my clients have been the victims of
13 phishing attacks, they have been the victims of scams.
14 They've had emails hacked. I mean, the list goes on and on.
15 And putting individuals' information out there, we run into
16 all of the same arguments that we were making sure on or
17 during the bankruptcy case, that there are legitimate, real-
18 world, practical reasons to protect this information that
19 have nothing to do with the Plaintiff desire to be able to
20 leverage higher settlements, or lower settlements for that
21 matter, from other Defendants. This is really a matter of
22 privacy and protection for folks who have already decided to
23 settle and don't want to be further harassed by phishing
24 attacks and so forth.

25 I think Your Honor might be frozen again.

1 CLERK: Judge? Let me get hold of him.

2 MS. KOVSKY-APAP: Your Honor, I think you're on
3 mute.

4 THE COURT: Yeah. I unmuted. I don't know what
5 the problem is today. I usually don't have this problem.

6 Ms. Kovsky, I mean, very early on -- I'm maybe
7 repeating some of what people heard. Early on I wrote an
8 opinion about sealing. And thereafter there were many
9 phishing attempts, there were threats, there were all sorts
10 of things. I am very sensitive to this issue.

11 Judge Lane in Gemini wrote an opinion going the
12 other way. And I have a lot of respect for Judge Lane and
13 his opinion. I think the world -- you know, a lot of things
14 happened by the time of that.

15 Judge Dorsey in FTX sealed information -- this
16 wasn't the settlement information.

17 I am not opposed -- you know, I would -- I am open
18 to considering whether it all should be sealed. I am open
19 to considering whether PII, including the names of the
20 settling parties, should be sealed. I am not ruling, okay?
21 I think these are difficult issues. Okay? I am very
22 sensitive to this issue of the strong public policy of
23 public access to court records in bankruptcy cases. And
24 courts should be able -- the public and parties should be
25 able to see if-- again, it's a question -- I don't know --

1 I'm not saying that the plan administrator didn't have
2 authority to settle it without coming to the bankruptcy
3 court to seek approval. I am not suggesting that if a 9019
4 motion were presented that I wouldn't approve it. I am not
5 saying whether or not I would be persuaded in the facts in
6 light of everything that's transpired in these cases to
7 seal, including names. But that wouldn't necessarily mean
8 it ought to seal information about the preference claim with
9 X dollars and something about what it was settled for and
10 maybe what the -- I just don't know.

11 So I think the first thing that strikes me, if the
12 plan administrator has the authority to settle without the
13 authority of the bankruptcy court, I could certainly see --
14 look, private settlements don't have to be disclosed. And I
15 think -- I can go back and read Judge Lynch's opinion
16 recently, but I think he recognized the distinction between
17 settlements that private parties reach, which frequently are
18 confidential and under seal, and those that require court
19 approval. And in bankruptcy court, many of the settlements
20 that I am presented with I do have to decide whether to
21 approve. And here judicial action is required to approve,
22 then it raises issues about what facts of circumstances
23 about it should be disclosed. Okay?

24 Let me just -- I've said this before. I have --
25 you know, in some large cases, I have approved a trustee or

1 a plan administrator's authority to settle up to a
2 particular dollar amount without court approval. But I've
3 never seen blanket authority and I've never -- I've looked --
4 -- you know, again, whether the argument is that post-
5 confirmation the bankruptcy court doesn't have to approve
6 the settlements. You know, if that's the showing you make,
7 fine. Okay.

8 Ms. Kovsky, I sort of cut you off. Is there
9 anything else you wanted to add?

10 MS. KOVSKY-APAP: No, Your Honor. I just wanted
11 to flag the PII issue.

12 THE COURT: I'm very sensitive to the PII issue.

13 Mr. Hershey, go ahead.

14 MR. HERSHEY: Yes, Your Honor. Thank you very
15 much for these comments. We will certainly address them.
16 And I was wondering if Your Honor had a briefing structure
17 or schedule in mind for addressing these issues or how we
18 should approach them.

19 THE COURT: Well, this was an uncontested motion.
20 That's the other thing.

21 MR. HERSHEY: Right, Your Honor.

22 THE COURT: I don't rubber stamp uncontested
23 motions. I at least want to be satisfied that I have a good
24 faith basis to granting the relief that I am asked to grant.

25 MR. HERSHEY: Understood. Would Your Honor permit

1 us two weeks let's say to submit?

2 THE COURT: Yes, I would.

3 MR. HERSHEY: Okay. That would be great. Thank
4 you. We will do that. And we'll address your questions,
5 Your Honor. Thank you very much.

6 THE COURT: Okay, all right. Thanks very much.
7 All right. Let's move on on the agenda.

8 All right. We get to the adversary proceedings.
9 And at least by my reckoning, the next matter is the motion
10 to approve alternative service on a wallet. And I guess,
11 Mr. Hurley, this is yours.

12 MR. HURLEY: Yes. Good afternoon, Your Honor.
13 You are right. It's not just a wallet, it's a number of
14 wallets.

15 THE COURT: It's a number of wallets.

16 MR. HURLEY: Mitch Hurley on behalf of the
17 litigation administrator.

18 So we filed on September 24th our motion for
19 alternative service, Your Honor. It's in connection with
20 three cases at Index 24-04005, 24-03994, and 24-04004. And
21 each of those cases involve some defendants where the only
22 identifying information available is the wallet address
23 where a transfer that we believe our client is entitled to
24 recover was made.

25 So we filed that motion on September 24th. We are

1 seeking approval of a kind of service that is certainly new-
2 ish. They weren't doing it 15 years ago. But --

3 THE COURT: It seems to happen a lot in the
4 Southern District of Florida.

5 MR. HURLEY: Yes.

6 THE COURT: I think all the cases you've cited are
7 Southern District of Florida District Court opinions. I've
8 read each of them.

9 MR. HURLEY: There is at least one case from New
10 York State. But the federal court cases, you may be right
11 that they're all -- hold on, I'm looking at the list now.

12 THE COURT: I found the links to the briefs, but
13 not -- and I think one of them a very short order. But none
14 of them were reasoned opinion -- I'm not, you know, I am
15 intrigued.

16 Let me ask you this.

17 MR. HURLEY: Sure.

18 THE COURT: And I thought that the -- give me a
19 second. The Trager declaration that you submitted in
20 support, ECF 12, was very good. He's obviously very
21 experienced. It laid out a lot -- look, I am not -- I
22 certainly was not familiar with service by creating a
23 website, dropping something into a wallet. And it was
24 pretty well described. The opinions that I read from -- they
25 were short, but the opinions from the Southern District of

1 Florida, they were uniform in their outcome. They permitted
2 it.

3 Do you have any information that these wallets
4 have been accessed any time recently?

5 MR. HURLEY: So let me say first of all, Your
6 Honor, on behalf of Mr. Trager, thank you for the compliment
7 on his declaration. Mr. Trager is present today if Your
8 Honor has any questions for him.

9 I don't know the answer to your question sitting
10 here right now. We can get you that information. It's
11 possible Mr. Trager has the answer with respect to how
12 recently some of these wallets have been active. But just
13 to be clear, there are a pretty large number of wallets.
14 It's a dozen-plus. So I'm not sure he's going to have that
15 at his fingertips. We can absolutely get you that
16 information, but I don't have it now.

17 THE COURT: So let me ask you, if I authorize this
18 service, I gather that Mr. Trager will be able to ascertain
19 whether the links dropped into the wallet, the links to the
20 website that have the service papers, whether -- those have
21 been accessed through the wallet, am I correct in that?

22 MR. HURLEY: So I believe the answer to that is
23 yes. As I said, Mr. Trager is on. With Your Honor's
24 permission, maybe we can just ask him directly?

25 THE COURT: I would like that.

1 MR. HURLEY: Okay. Jason?

2 MR. TRAGER: Can everyone hear me?

3 THE COURT: I can hear you. Just identify your
4 full name if you would.

5 MR. TRAGER: Good afternoon, Your Honor. I am
6 Jason Trager. I am the senior director of the Blockchain
7 and Digital Assets Practice with FTI Consulting. Good
8 afternoon everyone as well.

9 THE COURT: So let's assume I authorize this
10 service. As I understand, you set up a website. The
11 services papers go in there. You drop a link into the
12 wallet. I may be very inexact in what I am describing. I
13 don't have your declaration open in front of me.

14 And are you able to tell if someone has accessed
15 the website with the service papers?

16 MR. TRAGER: Yes, Your Honor. So what we'll be
17 able to do is, one, confirm the moment that the token is in
18 the wallet that we are airdropping it to so that it's one
19 metric for service.

20 THE COURT: How do you do that?

21 MR. TRAGER: We can use open explorers and
22 proprietary explorers that will -- for the Ethereum network,
23 the Bitcoin network, which are the only two networks we're
24 going to be using, they are public networks.

25 THE COURT: Okay.

1 MR. TRAGER: So we'll be able to see the exact
2 moment that they are officially transacted and now in the
3 possession of the wallet holder.

4 THE COURT: Okay. And can you see when the link
5 is connected and they get -- and ostensibly get access to
6 the service papers?

7 MR. TRAGER: Yes. And that we'll be able to do on
8 the back end through the website. When the link is typed,
9 we'll be able to track what time and date the visitor
10 arrives.

11 THE COURT: THE COURT: Okay.

12 MR. TRAGER: And in regards to your earlier
13 question, Your Honor, I do not have those exact dates that
14 they were last accessed, but that is something that we can
15 do as well, figure out when each of these wallets was last
16 transacted with or used.

17 THE COURT: And you have the information when Mr.
18 Stone transferred assets into those wallets?

19 MR. TRAGER: Yes, Your Honor.

20 THE COURT: So you would be able to ascertain --
21 you could provide a declaration about when Stone transferred
22 crypto into the wallets and when after that the wallets were
23 accessed?

24 MR. TRAGER: So we will be able to tell you the
25 last time that assets were transacted utilizing those

1 wallets. We wouldn't be able to tell you exactly if
2 somebody viewed the contents of the wallets and didn't
3 transact.

4 THE COURT: Okay.

5 MR. TRAGER: But could certainly tell you the last
6 time that a transaction occurred.

7 THE COURT: All right.

8 MR. HURLEY: And I should say, Your Honor, in some
9 cases the wallets are subsequent transferees.

10 THE COURT: Mr. Hurley, you just need to identify
11 yourself as a speaker when you...

12 MR. HURLEY: Apologies. Mitch Hurley with Akin
13 Gump on behalf of the litigation administrator. In some
14 cases, Your Honor, the transfers are subsequent transfers.

15 THE COURT: Okay. Have any judges in the Southern
16 District of New York approved service by this method?

17 MR. HURLEY: So, Your Honor, we identified the
18 cases that we found --

19 THE COURT: I think you cited one case that Judge
20 Cote had written.

21 MR. HURLEY: That sounds right, Your Honor. I
22 don't have it in front of me right now. But the cases that
23 we put into our submissions are the cases that we found.

24 We do think that it's a hundred percent consistent
25 with the rules, including the state court rules that we

1 would be relying on if they were domestic and Rule 4 to the
2 extent they are foreign. So under the --

3 THE COURT: So your position with respect to
4 foreign and any of the -- because we don't know where these
5 wallets are.

6 MR. HURLEY: Correct.

7 THE COURT: And your position is there's nothing
8 in the Hague Convention that rules out service by this
9 method?

10 MR. HURLEY: That's exactly right. We are not
11 aware of anything that would suggest that there's
12 international law prohibiting service (indiscernible). And
13 of course we cited the cases that have allowed it in the
14 past. So that's right, Your Honor.

15 THE COURT: Okay. So what happens if you do this
16 and you get no response? What do you do next?

17 MR. HURLEY: That's a question we've certainly
18 been grappling with, Your Honor. And I think that part of
19 it may involve coming back to you, looking for discovery in
20 various forms. We are hoping that we will get some
21 responses in connection with the service that we engage in.
22 But all we can do today is act with the information that we
23 have. We're certainly not going to stop looking for
24 additional information that would allow us to take further
25 steps even if they are -- we don't get responses on at least

1 some of these. And I would be shocked if we got responses
2 on all of them.

3 So we are going to just take it one step at a time
4 really, Your Honor.

5 THE COURT: Okay. There are several hands raised.
6 Mr. Weltman? You need to unmute.

7 MR. WELTMAN: Thank you. I just want to be guided
8 by Your Honor. Mr. Hershey made a comment about the October
9 15th deadline. At some point I would like to address that,
10 when you believe is the correct --

11 THE COURT: We're well past that. I mean, why
12 didn't you speak up before? We're on -- much further on in
13 the agenda.

14 MR. WELTMAN: No, I appreciate that.

15 THE COURT: Right now we're on the issue of
16 alternate service by tokens --

17 MR. WELTMAN: No, I understand that. I understand
18 that.

19 THE COURT: Are you speaking to service by
20 dropping tokens into wallets?

21 MR. WELTMAN: No, I'm not speaking to that issue,
22 Your Honor.

23 THE COURT: Then don't speak. I'll -- maybe I'll
24 come back to you. But you should have raised your hand
25 before.

1 MR. WELTMAN: Please (indiscernible) I would
2 appreciate it.

3 THE COURT: Okay. Mr. Vaughan.

4 MR. VAUGHAN: Yes. And I find this entire concept
5 extremely concerning. Essentially for the very reasons that
6 Mr. Trager and Mr. Hurley are referring to, the blockchain
7 on which these tokens are being distributed. There simply
8 is no way to know who views those tokens and who would be
9 clicking the links therein. Because as they said, it's a
10 public blockchain. You or I could go see that token the
11 second it goes into that wallet, click on that link, and
12 then all of the sudden it will trace back to your or I's
13 URL. There is no --

14 THE COURT: How do you distinguish the consistent
15 line of cases from the Southern District of Florida that
16 have authorized service in exactly this manner?

17 MR. VAUGHAN: Well, Your Honor, frankly I think
18 (indiscernible) to Florida because this is a new technology
19 and hasn't fully considered the ramifications of allowing
20 service by dropping in a wallet address.

21 THE COURT: You didn't file a brief in this. You
22 didn't -- I am listening to you, but nobody filed anything.

23 MR. VAUGHAN: You are correct, Your Honor. It
24 wasn't an issue that I briefed on.

25 THE COURT: Go on. I'll let you finish. Go

1 ahead.

2 MR. VAUGHAN: Yeah, no. Because it's a public
3 blockchain, Your Honor, anyone can view this link and click
4 on it. And the very idea that just because it was dropped
5 into a wallet and that someone clicked on it after it was
6 dropped in the wallet is not at all instructive as to
7 whether someone was actually served by receiving it there.
8 Because anyone can view it since it's on a public
9 blockchain. So it simply is not effective service because
10 it just says to the world this was dropped into this wallet
11 and this link is available to be clicked.

12 THE COURT: Mr. Hurley, do you want to respond?

13 MR. HURLEY: Your Honor, may I respond?

14 THE COURT: Yeah, please.

15 MR. HURLEY: Yeah. I mean, the fact that other
16 people besides the defendant can review it doesn't mean that
17 the defendant can't also review it. And the point with
18 service is to get that document in front of the defendant.
19 It seems to me that the fact that others also can see it is
20 just immaterial.

21 MR. VAUGHAN: Your Honor, may I respond?

22 MR. HURLEY: Your Honor, I actually don't know who
23 Mr. Vaughan represents.

24 THE COURT: I don't, either. Who do you
25 represent, Mr. Vaughan?

1 MR. VAUGHAN: Your Honor, I represent 42
2 defendants in the adversary proceedings.

3 THE COURT: Do any of them own the wallet that's
4 identified in the caption?

5 MR. VAUGHAN: No, Your Honor. But as the group
6 grows and expands, I would be fearful that this would be
7 deemed as --

8 THE COURT: Well, unless you're telling me you
9 represent a party in interest with respect to this motion, I
10 mean, I hear what you are saying. But do you have standing
11 to object? Let me ask you quite clearly; do you represent
12 any party in interest in any of the cases that are included
13 in this motion about service by token on a wallet?

14 MR. VAUGHAN: Well, frankly, Your Honor --

15 THE COURT: Yes or no?

16 MR. VAUGHAN: It's hard to say at this point
17 because we --

18 THE COURT: No, it isn't hard to say. You've got
19 clients. Are you representing to the Court that you
20 represent a client that has an ownership interest in one of
21 the wallets that's identified in these adversary
22 proceedings, yes or no?

23 MR. VAUGHAN: Not to my knowledge, Your Honor.

24 THE COURT: Okay.

25 MR. VAUGHAN: But that's not to say that --

1 THE COURT: All right. Thank you very much.

2 MR. VAUGHAN: Yes, Your Honor.

3 THE COURT: Go ahead, Mr. Hurley.

4 MR. HURLEY: So, Your Honor, I don't have much
5 more to add beyond what's in the papers. We do believe that
6 this method of service is authorized by the rules and
7 consistent with approaches to alternative service that have
8 been laid out in lots of cases. And then there are a number
9 of specific instances that are all cited in a brief, you've
10 already referenced them, where this exact kind of approach
11 to service has been endorsed in the past.

12 It's the method that's available for us to proceed
13 against these defendants. It's the only method. And so we
14 respectfully ask that Your Honor approve the approach.

15 THE COURT: What I would like is file a
16 supplemental declaration from Mr. Trager showing that
17 subsequent to the transfers or subsequent transfers, that
18 the wallets were accessed. I might have a different view.
19 I don't know for sure, Mr. Hurley. But what if these
20 wallets have not been accessed since whenever the transfers
21 were made, would you still say that service in this matter
22 is appropriate? I mean, it has to be serviced reasonably
23 practicable in the circumstances to give actual notice. And
24 if there were wallets that just are there and haven't been
25 accessed, that's a concern to me.

1 MR. HURLEY: Understood. I don't think the other
2 cases that we have seen have made that a condition of
3 granting or approving this method of service. I understand
4 the concern you're raising. I mean, I suppose it's similar
5 to a last-known mailing address. I mean, you provide -- you
6 mail papers to that address. I don't think typically you
7 would even be able to prove that somebody has received mail
8 at that address lately. What you can demonstrate is that at
9 one time the person you're trying to get documents to lived
10 there and received information there. And I think the same
11 thing would be true with a wallet. We certainly don't have
12 any evidence that the ownership of the wallet has changed
13 since the transfer that we're seeking to recover on. So I
14 would think it's similar to that, Your Honor.

15 THE COURT: How do you know? I mean, I don't know
16 one way or the other whether the ownership of the wallets
17 have changed since the transfers were made.

18 MR. HURLEY: It's a fair point, although I think
19 probably that would not be an inquiry with respect to let's
20 say allowing mail service. You would probably have to
21 establish that the house that you want to mail to hasn't
22 been sold since the last time there's evidence that the
23 person you're trying to contact lives there.

24 But let us work with Mr. Trager. We'll come back
25 to you with the information that we have. I honestly don't

1 know the answer to the question about which of these
2 defendants will have post-transfer activity, but we can
3 certainly get that to you.

4 THE COURT: Okay. You know, let me make clear; I
5 haven't decided that that's a determinative fact. Okay?
6 The opinions from the judges, the district judges in the
7 Southern District of Florida, they have been at least -- I
8 don't know -- did you find any contrary authority?

9 MR. HURLEY: My colleague, who did more of this
10 than I did, is shaking her head. I believe the answer is
11 no, Your Honor. We will confirm that when we come back to
12 you with the additional Trager declaration.

13 THE COURT: Is that Ms. Scott?

14 MR. HURLEY: Yes.

15 THE COURT: Let me ask her, did you find anything
16 contrary, any contrary authority?

17 MS. SCOTT: No, Your Honor. I don't believe we
18 saw any contrary authority.

19 THE COURT: Okay. I'm intrigued by it. And where
20 we go from here, I don't know. I'm not sure the ball is
21 going to get advanced very far if radio silence is in
22 response to dropping tokens into these wallets, even if
23 they're accessed. But we'll deal with it one step at a
24 time.

25 I am interested in knowing whether -- see, I do

1 have trouble, Mr. Hurley, if there was evidence that
2 ownership of the wallets was transferred that the allegedly
3 improper -- that the avoidable transfer is no longer there
4 when the wallet -- you know, there were other assets in
5 there, but not the avoidable transfers. You know, I have
6 questions in my mind. So let's take it one step at -- I
7 won't say one step at a time, but we'll try and answer this.
8 And I don't think I'm going to -- I don't think it will be
9 that long before I provide an answer to you, okay?

10 MR. HURLEY: Understood, Your Honor. We'll get
11 you the additional submission right away.

12 THE COURT: All right. Let's move on on the
13 agenda. The next item is customer -- Celsius customer
14 preference actions, the revised motion establishing
15 procedures. Who is going to handle that?

16 MR. HERSHEY: Yes, Your Honor. That's me again.
17 Sam Hershey from White & Case for the litigation
18 administrator.

19 Before I do that, Your Honor, I do just want to
20 flag that, as I thought might happen, with the benefit of
21 time we have identified the provision of the plan that
22 allows us to settle claims without court approval.

23 THE COURT: Okay.

24 MR. HERSHEY: Do you mind if I read that into the
25 record?

1 THE COURT: No, I don't.

2 MR. HERSHEY: Okay. So it's again Docket Number
3 4289. It's PDF Page 66, which is Section IV(S). And the
4 last sentence of that section reads, "The post effective
5 date debtors, the plan administrator, and the litigation
6 administrators as applicable shall have the exclusive right,
7 authority, and discretion to determine and to initiate,
8 file, prosecute, enforce, abandon, settle, compromise
9 release, withdraw, or litigate to judgement any such causes
10 of action --" a defined term that I'll come back to, "-- and
11 to decline to do any of the foregoing without the consent or
12 approval of any third party or further notice to or action
13 order or approval of the bankruptcy court.

14 And the defined term causes of action, it's the
15 31st defined term in the plan. It includes among other
16 things Chapter 5 claims and avoidance actions, another
17 defined term. So that's the authority under the plan, Your
18 Honor.

19 If Your Honor would like further briefing on the
20 legal issues that are involved that Your Honor mentioned, we
21 are of course -- we will do whatever Your Honor would like.
22 But that's where the authority in the plan is.

23 THE COURT: Obviously I'll go and read it. I
24 appreciate your finding it and calling it to the Court's
25 attention. My clerks and I have done obviously a fair

1 amount of work. We missed that one provision.

2 MR. HERSHEY: It's a long plan, Your Honor.

3 THE COURT: No, that's okay. As I said earlier,
4 assuming that it's correct that the plan administrator had
5 the authority to settle the claims without seeking approval
6 of the bankruptcy court, it could well affect my 107(b)
7 sealing analysis. Perhaps you and/or Mr. Kovsky could just
8 file something really short. Okay? And with regard to the
9 confidentiality of terms of a settlement that plan
10 administrators authorized to enter into without the approval
11 of the bankruptcy court.

12 As I say, as my recollection about Judge Lynch's
13 decision and my own decision, if I'm being asked to approve
14 a settlement, the parties and the public at large are
15 entitled to know what I took into account, why did I decide.

16 If the plan administrator had the authority to do
17 this on his own without approval of the bankruptcy court, I
18 think it would affect whether or not -- I mean, private
19 parties ordinarily can enter into settlement agreements that
20 are confidential.

21 I guess I would ask that if you want, file just a
22 short memorandum addressing this.

23 Ms. Kovsky, I know you are interested in this
24 point as well. And I'm not looking for lengthy briefs on
25 the point. Judge Lynch's decision in the Geltzer case and

1 mine in Oldco, the only ones that -- I haven't gone back to
2 look to see whether there have been more since. Those are
3 the only two that I am familiar with.

4 MR. HERSHEY: We will do so, Your Honor. Thank
5 you very much.

6 THE COURT: Okay. Thanks very much. And I doubt
7 that you will need to have another hearing about it. I
8 mean, you've reduced the number to 87 parties.

9 MR. HERSHEY: Yeah. It's actually, Your Honor, I
10 was correct. It's 87 agreements, but there were apparently
11 parties who were for whatever reason represented twice in
12 some of the agreements. So it's 84 agreements among 87
13 parties.

14 THE COURT: Okay, 84 agreements.

15 MR. HERSHEY: But yes, it's reduced, Your Honor.

16 THE COURT: Okay, got the point.

17 MR. HERSHEY: Okay.

18 THE COURT: How much time do you want to -- do you
19 want to file anything else on sealing?

20 MR. HERSHEY: No, Your Honor.

21 THE COURT: Okay. Ms. Kovsky, do you want to file
22 anything on sealing?

23 MS. KOVSKY-APAP: Your Honor, these particular
24 settlement agreements don't affect my clients. This was --
25 I raised the point more generically should it happen in the

1 future.

2 THE COURT: Okay, all right. The Court will take
3 it under submission. It won't take me very long to decide
4 that. Okay?

5 MR. HERSHEY: Thank you, Your Honor.

6 THE COURT: All right. I think we've completed
7 the agenda.

8 MR. HERSHEY: Oh wait. No, Your Honor. I was
9 about to address the motion for streamlined procedures.

10 THE COURT: Oh right, right. Sorry.

11 MR. HERSHEY: I'm sorry, I got us off track.

12 THE COURT: How could I forget?

13 MR. HERSHEY: Yeah. All right. So if I may, Your
14 Honor, I'll give my argument --

15 THE COURT: Let me get my notes. Just a second.

16 MR. HERSHEY: Of course, Your Honor.

17 THE COURT: I've got a lot of notes on this.

18 I have them. Go ahead, Mr. Hershey.

19 MR. HERSHEY: Thank you, Your Honor. So, Your
20 Honor, three months ago, in an effort to manage the 2,500

21 customer preference cases, the litigation administrator

22 filed a motion for streamlined procedures. Shortly

23 thereafter, the Court requested that the parties identify

24 common issues to be litigated as to all defendants. What

25 followed has been many conversations both internally among

1 the litigation administrator's advisors and externally with
2 numerous defense counsel to try to come up with a set of
3 common issues and agreed procedures to govern these
4 litigations.

5 It is a testament to the success of that process
6 that of the 2,500 defendants, only 7 limited objections to
7 the litigation administrator's proposed procedures have been
8 filed, raising only a handful of discrete issues.

9 THE COURT: But Ms. Kovsky filed something on a
10 limited objection. She's got a lot of clients.

11 MR. HERSHEY: That's true, Your Honor. It's true
12 that she has a lot of clients. But I will --

13 THE COURT: It's not the number of clients, it's
14 the number of objections, limited objections you've
15 received.

16 MR. HERSHEY: I will note, as Ms. Kovsky notes as
17 well, that we've had -- perhaps of all the counsel we've
18 dealt with, a very productive experience with Ms. Kovsky
19 where we've really narrowed the issues. She did raise a few
20 issues though that I will address.

21 THE COURT: Okay, go ahead.

22 MR. HERSHEY: Before I do that, I will note that
23 certain of the objections have already been ruled on by the
24 Court. So, for example, the Court ruled at the August
25 hearing that there will be mandatory mediation. That's a

1 decided issue. I don't plan on addressing that again. The
2 Court also ruled that fees for mediations will not be solely
3 borne by the litigation administrator. I don't plan on
4 addressing that again.

5 What I will do is run through the remaining
6 disputes, particularly the large disputes that really
7 require this Court's attention. And I just want to note
8 that if parties raise other issues than those I address
9 here, I would request the opportunity to address those
10 issues on reply.

11 I will start with what I think is the most
12 significant dispute and what in our brief we call the Phase
13 One damages issues. So that is the question of whether the
14 litigation administrator can recover the assets that were
15 transferred by Celsius or the current value and whether the
16 litigation administrator has correctly calculated new value.

17 All parties agree that these are issues that will
18 need to be decided at some point. We think they should be
19 decided in Phase One. The Troutman and Lowenstein groups
20 think they should be decided in a new Phase Three.

21 Now, I get that these are issues that relate to
22 damages. We call them the Phase One damages issues. But to
23 be clear, there is absolutely no reason why this Court could
24 not order these issues to be decided in Phase One. The
25 authority underlying this exercise, which I don't think

1 anyone has explicitly cited, but we all know is Rule 7042
2 which allows this Court to manage the cases however the
3 Court determines to be most efficient.

4 So when Your Honor asked us to consider common
5 issues, we weren't focused on issues that we think would
6 normally be resolved in the beginning of the case or the
7 middle of the case or the end of the case. We were focused
8 on what we believed were the key gating items common to all
9 defendants that needed to be resolved for these cases to
10 proceed efficiently.

11 And when we considered that question, it was
12 crystal clear to us that some of the most important
13 threshold issues are the Phase One damages issues. Again
14 and again when trying to resolve disputes with various
15 parties, we've run into these issues. And you don't have to
16 take my word for it; you can look at what defendants
17 themselves have filed.

18 We cited in our brief just a small sample of the
19 answers and motions to dismiss that have been filed in
20 various customer preference cases, arguing that the
21 litigation administrator cannot recover the transferred
22 assets or that the litigation administrator has
23 miscalculated new value. In fact, in one of the objections
24 to our procedures motion, which is the Falcon Rappaport
25 objection at Docket Number 14. They argue that our proposed

1 mediation fees were miscalculated because we based them on
2 the transaction date -- we based them on the current value
3 of the assets rather than the transaction date value of the
4 assets. And that sort of crystallizes things.

5 As I said at the last hearing, and I'll say it
6 again now, if these issues are not decided before mandatory
7 mediation starts, which we propose would be in line with
8 Phase Two, they will be a major if not insurmountable
9 impediment to the success of those mediations. The parties
10 will simply start too far apart to reach a resolution.

11 Now, the Troutman and Lowenstein groups argue they
12 will be prejudiced if these issues are decided in Phase One.
13 And I have to say I just don't see it. These are purely
14 legal issues that can be resolved on the briefing. There is
15 no experts needed, no discovery needed. And it's not like
16 these are issues the parties have not thought about. These
17 parties are certainly going to raise these issues in the
18 mediations. So where is the prejudice from having the
19 parties address these issues with the Court?

20 The real prejudice would be for the litigation
21 administrator undertaking the time and expense of
22 potentially hundreds of mediations which may well be doomed
23 to failure because these important legal issues have not
24 been resolved.

25 Now, the Troutman and Lowenstein groups also argue

1 that the litigation administrator is improperly seeking
2 reverse bifurcation. I am sure Your Honor is familiar
3 enough with the asbestos cases that defendants cite to know
4 that this is not reverse bifurcation that we are seeking.
5 We are not seeking a trial on the amount of any defendant's
6 liability. We're not even seeking a judicial determination
7 regarding whether any particular defendant is liable at all.
8 All we are seeking are determinations regarding questions of
9 law that have repeatedly been raised by defendants as
10 threshold issues requiring resolution for the parties to
11 reach agreement. That is something that can be done quickly
12 and cost efficiently. There is no reason to --

13 THE COURT: Mr. Hershey, hold on. I'm having all
14 sorts of problems today. And I apologize. You had cut out.
15 My connection disconnected. It's reconnected now.

16 I hate to ask you to repeat, but go back. You
17 were talking about the Phase One damage issue.

18 MR. HERSHEY: Yes, Your Honor. And it's no
19 problem at all, Your Honor. I just don't know where Your
20 Honor cut out. So I can do it all again or I can start --
21 if you remember what you last heard, Your Honor, I could try
22 to start from there.

23 THE COURT: Why don't you quickly start again and
24 I'll slow you down when I want you to. Okay?

25 MR. HERSHEY: Sure, Your Honor. Absolutely, Your

1 Honor.

2 So we recognize that the Phase One damages issues
3 are damages issues. You know, to be clear, Your Honor has
4 authority under Rule 7042 to --

5 THE COURT: Oh, I don't doubt that I have the
6 authority to do it. Okay?

7 MR. HERSHEY: Okay, thank you, Your Honor. And
8 the overarching point that I was making is again and again
9 these are issues raised by defendants that we are
10 encountering, particularly when trying to settle these
11 cases. And we know this because the defendants themselves
12 in the answers and motions to dismiss that they filed in
13 their preference cases raise these issues again and again.
14 And we cited a few examples in our brief.

15 And in fact one of the objections to our proposed
16 procedures argued that our mediation fees, proposed
17 mediation fees were miscalculated because they were based on
18 the current value of the assets rather than transaction date
19 values. So these issues are arising again and again. And
20 as I said at the last hearing, if these issues are not
21 decided before mandatory mediation, they will be a major
22 impediment if not an insurmountable impediment to the
23 success of those mediations. We will simply be too far
24 apart from the defendants to reach a resolution. And so we
25 need clarity on this issue from Your Honor.

1 THE COURT: And you think it's just purely a legal
2 issue as opposed to a factual issue?

3 MR. HERSHEY: I do, Your Honor. At least on the
4 issue that we are presenting, which is do we have authority
5 under 550(a) to seek return of the assets. We think based
6 on the plain language of the statute, we do. And are we
7 calculating new value correctly based on 547(c), which says
8 that new value is to be calculated based on a transfer to
9 the Debtor after the first preferential transfer from the
10 Debtor. And so on that basis, we think we are -- these are
11 purely legal issues.

12 I will note, and I'm sure Ms. Kovsky will make
13 this point, that some of the arguments as to why we are
14 wrong on these issues are based on the plan of
15 reorganization. That is again a legal document, a contract
16 that Your Honor can interpret as a matter of law. So we
17 don't think that defense to these issues takes us out of the
18 realm of legal issues that Your Honor can quickly decide
19 just on the briefs without the need for experts or fact
20 discovery.

21 So, Your Honor, I guess the last thing I'll note
22 is the Troutman and Lowenstein groups argue that we are
23 seeking reverse bifurcation. To be clear, that's not what
24 we're doing. I am sure Your Honor is familiar with the
25 asbestos cases that defendants rely on to know that's not

1 what we're doing. We're not seeking a trial on the amount
2 of any defendant's liability. We're not even seeking a
3 decision from Your Honor regarding whether any defendant is
4 liable at all. We are just seeking a determination on
5 threshold legal issues that have been repeatedly raised by
6 defendants and that we have seen as an impediment to
7 reaching resolution. And we believe a resolution is
8 necessary for the mandatory mediation to be effective.

9 I will move on to the second issue, Your Honor, if
10 I may.

11 THE COURT: Go ahead.

12 MR. HERSHEY: Which is the contention by a small
13 number of defendants that the 546(e) safe harbor defense
14 should be litigated in Phase One. I'll note --

15 THE COURT: Let me stop you. We're not litigating
16 546(e) is part of Phase One. I've already decided that.

17 MR. HERSHEY: Thank you, Your Honor. Then I will
18 move on.

19 And there were only a few disputes left that I
20 wanted to address with Your Honor. They relate to how we
21 will structure the mediations. And I'll start with the list
22 of mediators.

23 We submitted a revised list of mediators to Your
24 Honor. We understand Your Honor intends to call that list
25 and we will of course take guidance from Your Honor.

1 THE COURT: Well, Mr. Hershey, I want you to call
2 the list. Okay? There's too many mediators. I don't want
3 -- I have already made clear I don't want anybody who
4 represented a party in interest at any point in the case to
5 be a mediator. There are too many mediators. There needs
6 to be enough -- look, I'll make two points. I will permit
7 you to propose a smaller number of mediators. I will permit
8 defendants to suggest -- I don't want to give the number
9 right now -- some additional number of mediators. Okay? I
10 would like you to meet and confer and see if you can agree
11 on those that they've identified.

12 But, look, from my standpoint, Mr. Hershey, based
13 on my experience, there needs to be enough mediators given
14 the number of cases we have that there isn't going to be an
15 enormous backlog in getting the cases mediated. There needs
16 to be enough people that people are comfortable choosing
17 from them. But there's just too many. What the right
18 number is -- my own view, if we add three for example, the
19 three or four that have been suggested by the defendants and
20 we wind up with an entire pool of ten, that in my view is
21 sort of the outside limit. It's more than I've ever
22 approved in any other case, but I also haven't had one where
23 there were close to 2,500 adversary proceedings.

24 The real advantage for all of you is the learning
25 curve that the mediators gain so you can have more expedited

1 mediations. Okay? But there's just too many. I think if
2 we wind up -- I am prepared to approve a total list of ten.
3 That includes some suggested by the defendants as well.

4 MR. HERSHEY: Absolutely, Your Honor. And I'll
5 just note two quick things, Your Honor.

6 The first is that our revised proposed list does
7 include some suggestions from defendants. But we will
8 certainly continue to meet and confer with them and make
9 sure that they have three or four that are represented.

10 I did want to ask. Your Honor had said before
11 that you don't want parties who are involved in the
12 bankruptcy case. I didn't know if that included Judge
13 Sontchi, who was on our list. I don't know as a
14 representative of the estate if you felt he should be --

15 THE COURT: No, I wouldn't include -- put it this
16 way. I wouldn't include him on the list that I'm thinking
17 about.

18 MR. HERSHEY: Okay. Understood, Your Honor.

19 THE COURT: You had a couple of people who had
20 represented defendants in adversary proceedings, for
21 example, that were resolved.

22 MR. HERSHEY: Yes.

23 THE COURT: It shouldn't include any of those.
24 Judge Sontchi, he obviously was the fee examiner in the
25 case, has a lot of familiarity with the case, but did not

1 represent any party in interest in the case. You know, I
2 personally have a lot of confidence in Judge Sontchi. I
3 think he is excellent. But whether he would wind up being
4 selected or not. I also think he is eminently fair, but
5 people will -- you know, hopefully you will be able to agree
6 on a mediator.

7 There's a real advantage of getting people who
8 know about this case, who have lived through a lot of it but
9 didn't represent a party in interest.

10 MR. HERSHEY: Right. Understood, Your Honor.
11 Absolutely understood. Only a few more quick issues, Your
12 Honor.

13 THE COURT: Okay.

14 MR. HERSHEY: Some parties took issue with our
15 proposed mediation fees. We tried to track them based on
16 precedent. We believe they are fair and reasonable. Again
17 though we will of course take guidance from Your Honor. But
18 it's our position that our fees are appropriate.

19 THE COURT: I will tell you that one of the things
20 that I am considering is changing the split to 60 percent
21 plan administrator, 40 percent defendant. You proposed
22 50/50. I think in many cases I would agree with that. I
23 think that I also would -- and I think this was a suggestion
24 by some of the defendants. I don't remember precisely which
25 ones at this point. I would be happy to have a procedure

1 that would provide applications for waiver or reduced fees
2 demonstrated on financial hardship. I guess that's in the
3 Falcon Rappaport group suggests that the Court consider
4 alternate fee arrangements including reducing mediator
5 compensation, the fee range, have it based on the 2022
6 transfer values. I'm not prepared to say what date value it
7 should be based on. Providing a sliding scale of mediation
8 fees depending on the defendant's circumstances, ability to
9 pay. I'm not prepared -- I'm not going to go through 2,500
10 applications. I'm willing to consider a provision that
11 provides for waiver or reduced fees based on demonstrated
12 financial hardship. But these are all -- you know,
13 preference claims of \$100,000 or more doesn't automatically
14 translate into the absence of financial hardship. But
15 there's greater financial hardship if a defendant has to go
16 through and litigate this whole case, frankly.

17 MR. HERSHEY: Right.

18 THE COURT: But I do want a provision built in
19 that does have a mechanism for -- I do want to shift to
20 60/40. I do want to put in a provision that allows
21 applications for waiver or reduction of fees based on
22 financial hardship.

23 MR. HERSHEY: Understood, Your Honor. I guess my
24 one question would be if there is a waiver or a reduction of
25 fees, do those fees then shift to the litigation

1 administrator? Because my concern with that would be that
2 then we are being ordered to mediate with a party who can
3 effectively not engage with impunity because they bear no
4 cost from the mediation.

5 THE COURT: Well, have a little confidence in my
6 ability to look at whatever showing is made of financial
7 hardship.

8 MR. HERSHEY: I certainly have confidence, Your
9 Honor.

10 THE COURT: Just let me finish.

11 MR. HERSHEY: Sure.

12 THE COURT: You may have the strongest claims
13 going, but with a total inability to collect.

14 MR. HERSHEY: Right, Your Honor. Absolutely.

15 THE COURT: Sophisticated counsel always look at
16 is the settlement going to be collectible. And if someone
17 is able to show financial hardship, the least of which you
18 have to worry about is that you're going to bear a larger
19 share of the mediation cost. You'll have to put in a
20 calculus of how strong is my claim against them if this is
21 really -- I'll give you a chance if you want to rebut the
22 financial hardship, yes. I don't want extensive -- we're
23 not going to have a mini trial on financial hardship. But
24 if you want to dispute the -- I'm not going to simply accept
25 a declaration that says, you know, this is -- Celsius has

1 left me financially strained. If somebody is going to show
2 financial hardship, they are going to have to show some
3 financial hardship. I will permit affidavits or
4 declarations of financial hardship to be filed under seal
5 with a copy to counsel for the plan administrator.

6 MR. HERSHEY: Completely understood, Your Honor.
7 And I have complete confidence in Your Honor to determine
8 who has financial hardship and who doesn't. I guess my only
9 point would be if these parties do have financial hardship,
10 there may not be a point in mediating. Because if they
11 can't pay \$2,000 to mediate, to your point, Your Honor, I
12 don't know what we would collect in a judgement.

13 So I just want to make sure that we're not sent to
14 a mandatory mediation where we're carrying the cost. And to
15 Your Honor's point, we're carrying them based on the fact
16 that they can't pay anything.

17 THE COURT: Look, you may decide if they file a
18 declaration showing financial hardship, you may conclude
19 that it's not worth pursuing them.

20 MR. HERSHEY: Right. Agreed, Your Honor. Agreed.

21 THE COURT: The ball is in your court on that. I
22 mean, the plan administrator will decide I've got a strong
23 claim, but I'll never collect a penny. Why am I going to do
24 this?

25 MR. HERSHEY: Understood, Your Honor. Okay.

1 THE COURT: All right.

2 MR. HERSHEY: The very last point, Your Honor, is
3 there was some discussion in the briefing about how Phase
4 Two briefings should be structured and when expert reports
5 should come in. I spoke to Mr. Besikof and Ms. Kovsky, who
6 had made that objection. And we agree -- and they can speak
7 for themselves -- but it probably makes sense to punt on
8 that issue and have Phase Two briefing determined when we
9 get there. We don't know what Phase Two will look like at
10 this point. It's possible some issues, if they are found to
11 require discovery, will carry forward to Phase Two and that
12 will have an impact on how we want to stage the briefing.
13 So we will present a revised form of order that just kind of
14 reserves on the right of the parties to determine Phase Two
15 briefing when we get there if that's acceptable to Your
16 Honor.

17 THE COURT: Okay. Give me one second.

18 All right. I'm going to give the preference
19 defendants until noon October 29th to suggest possible
20 mediators to be put on the list. And the reason I'm setting
21 it out that far, I don't know how many people observe the
22 Jewish holidays. It's a jam-packed time of the year and
23 there's Yom Kippur is next weekend, there's Sukkot, there's
24 other holidays. So I'm picking the 29th for anybody who is
25 observant, gives them enough time to be able to suggest --

1 what I want you to do, Mr. Hershey, is engage. And I really
2 want ten names.

3 MR. HERSHEY: Absolutely, Your Honor.

4 THE COURT: And it may be that you'll have a
5 disagreement and you'll submit eight and they'll submit ten
6 and I'll cut the list. But there is a real advantage to
7 having a narrower list. It cuts the learning curve for each
8 of them. There's enough cases that they'll each have
9 enough. Okay.

10 MR. HERSHEY: Yeah. Thank you, Your Honor.

11 THE COURT: Let me hear from -- I'll hear from Ms.
12 Kovsky first, who raised her hand immediately. This is
13 really on the issue what ought to be Phase One, Phase Two,
14 et cetera.

15 MS. KOVSKY-APAP: Yes. Thank you, Your Honor.
16 And I also wanted to thank Mr. Hershey and his team for
17 working with me and Mr. Besikof to narrow the issues so that
18 at this point there's really only one point in contention
19 that's before Your Honor today, and that's really should
20 defendants be forced to expend significant legal fees
21 litigating the non-dispositive issue of how much liability
22 they may have before Your Honor determines whether or not
23 they actually have liability.

24 Mr. Hershey started out by saying everybody agrees
25 that this issue of damages is going to need to be decided at

1 some point. And while I applaud his optimism and belief in
2 the strength of his case, I would submit respectfully, Your
3 Honor, that there is a good chance that this will never need
4 to be litigated, that the gating issues -- and we talked
5 about gating issues, Your Honor. We were talking about
6 dispositive issues that might actually just be case-
7 determinative. And those are the common issues we were
8 looking for. If those dispositive issues are determined in
9 our favor, we never get to the question of how should
10 damages be calculated, because there are no damages.

11 Even if these are purely legal issues -- and by
12 the way, we strongly dispute that. Mr. Hershey sort of
13 cavalierly says, oh, it doesn't take much to brief them. It
14 actually does, Your Honor. It takes legal research, it
15 takes writing, it takes showing up at hearings. It takes
16 internal conferences, conferences with clients. And while
17 Mr. Hershey's client is sitting on a war chest of tens of
18 millions of dollars, my clients are not.

19 And Your Honor indicated just because somebody
20 withdrew \$100,000 or more does not mean that they are
21 wealthy individuals. You have to remember that these
22 customers of Celsius withdrew crypto at a time when the
23 markets were in absolute turmoil in the crypto space. Many
24 of them lost everything after they subsequently withdrew,
25 whether on DeFi projects, on other entities that went

1 bankrupt, or they used the money in the ordinary course to
2 buy a house, pay college tuition, whatever it is.

3 But the point is these are not big corporations
4 with bottomless funds to be able to litigate. And to force
5 them to spend tens or hundreds of thousands of dollars
6 litigating an issue that Mr. Hershey speculates might help
7 him reach settlements in mediation is just completely unfair
8 and prejudicial.

9 I also want to point out we were talking earlier
10 about settlements. Mr. Hershey and his team and the
11 litigation administrator have managed to settle over 1,600
12 by my count preference actions. And having this issue in a
13 gray area without clear guidance from Your Honor as to
14 whether claw backs can be in kind versus the transfer date
15 value, that didn't seem to impede any of those settlements.
16 The parties were not too far apart to reach settlement.

17 THE COURT: You'd better hurry up and settle
18 before we get to this.

19 MS. KOVSKY-APAP: Well, Your Honor, I would also
20 point out we've gotten some phenomenal mediators on the
21 list. We've got Judge Sontchi. We've got Judge Hale. I am
22 very confident that we get in front of them, they're going
23 to help us narrow that gap even further. And our clients
24 will listen to them when they say, you know, we think you're
25 got real risk here. And I would hope that Mr. Hershey's

1 client would listen to them when they say you've got real
2 risk here.

3 There is a way to get these issues resolved in
4 mediation without having to incur the expense of litigating
5 them upfront, particularly when there is a good chance
6 they'll never need to be litigated at all.

7 I also want to address Mr. Hershey's contention
8 that this is completely different from reverse bifurcation.
9 It's really not. It's putting the cart before the horse.
10 And the sole reason is really because the Plaintiff thinks
11 that somehow this will give him an advantage in mediation.
12 But the truth is -- and this is in the cases we've cited and
13 in the scholarly articles -- litigating the measure of
14 damages does not facilitate early settlement when the real
15 issue is whether defendants have liability at all. And my
16 clients have not been raising the issue, oh, we don't want
17 to settle because we think you can only claw back the amount
18 that we actually took out at the time we took it out. To
19 the extent that my clients haven't settled, it's because
20 they don't believe they have liability. They believe they
21 have complete defenses.

22 So I'm not sure if we lost the Court. Okay.

23 THE COURT: Ms. Kovsky, right at the point where
24 you told me how confident you were, my screen went dark
25 again. I don't know what the problem today is.

1 MS. KOVSKY-APOP: Well, my point is -- the point I
2 was trying to make, Your Honor, I am not sure how much you
3 heard. But there is a good chance that the issue of damages
4 may never need to be litigated at all. And it is
5 prejudicial and unfair to ordinary customers to force them
6 to incur tens or hundreds of thousands of dollars in legal
7 costs litigating an issue that may never even become
8 relevant. And the caselaw is clear, the scholarly articles
9 are clear that litigation the measure of damages does not
10 facilitate early settlements when the real issue is whether
11 parties actually have liability. And that's the hill my
12 clients are standing on right now, not saying we don't want
13 to settle because we think that you can only claw back
14 dollarized values as of the transfer date. No, they're
15 saying we believe that we have complete defenses to
16 liability.

17 THE COURT: You know, there's enough people --
18 look, there's enough people on the defense side that I think
19 if you organize a session among defense counsel and allocate
20 who takes the lead on which arguments and brief, you'll
21 still have an opportunity to review and you won't have to do
22 all the work on it.

23 So I hear your argument. I haven't decided yet.
24 But do you have any additional points for me?

25 MS. KOVSKY-APAP: I do, Your Honor.

1 THE COURT: Go ahead.

2 MS. KOVSKY-APAP: And you're absolutely right; we
3 are trying to be as efficient as possible. You've seen that
4 Mr. Besikof and I have sought to consolidate all of our
5 cases together and are working very cooperatively both for
6 our efficiency and the Court's.

7 The other point I wanted to make is that we
8 shouldn't be required to litigate these issues without the
9 benefit of discovery. These are not purely legal issues.
10 The disclosures that the Debtors made to customers, what
11 they put in the ballots regarding withdrawal preference
12 exposure, when they were asking customers to vote on the
13 plan and to grant releases and to contribute claims, these
14 are all things that factor into whether or not the
15 litigation administrator should be bound by the terms of the
16 plan that was confirmed by this Court.

17 With respect to 550(a) --

18 THE COURT: Well, if you have an argument that the
19 terms of the plan bind the litigation administrator and
20 preclude damages, that's a legal argument. You can go ahead
21 and make that.

22 MS. KOVSKY-APAP: Well, to the extent that the
23 plan may be ambiguous, we're talking parole evidence. And
24 if we're going to have to litigate it later anyway, why not
25 push it all off instead of doing it twice, which is just --

1 THE COURT: We're not. We're not going to push it
2 all off. Okay. Any other points, Ms. Kovsky?

3 MS. KOVSKY-APAP: Two issues that were raised in
4 our limited objection that the litigation administrator does
5 not have an issue with. We wanted to clarify that this is
6 without prejudice to our ability to file a motion to
7 withdraw the reference to the extent we believe it's
8 appropriate.

9 THE COURT: I think Mr. Hershey agreed with that,
10 didn't he?

11 MS. KOVSKY-APAP: He did. And so we're just
12 looking to have something memorizing that in the amended
13 order.

14 THE COURT: No, I understand that. My
15 understanding was you raised it, he agreed that you would
16 reserve rights to withdraw the reference.

17 MS. KOVSKY-APAP: And the substance of
18 consolidation -- and this is really more for Your Honor
19 because it's a case management issue. But Mr. Beskiof from
20 Lowenstein and I had sought to have all of our cases
21 consolidated for pretrial purposes just so we don't have to
22 file the same motions or pleadings over and over again on
23 the consolidated docket.

24 THE COURT: Mr. Hershey, do you have a problem
25 with that?

1 MR. HERSHEY: No problem at all, Your Honor.

2 THE COURT: Okay. I agree.

3 MS. KOVSKY-APAP: Thank you, Your Honor. That's
4 it from me.

5 THE COURT: Okay. Mr. Besikof?

6 MR. BESIKOF: Thank you, Your Honor. For the
7 record, Dan Besikof of Lowenstein Sandler for certain
8 defendants. I will be very, very brief because Ms. Kovsky
9 covered really everything I was planning to say.

10 But I really want to focus on the point that
11 having a decision on the issue of damages will bring parties
12 together. My sense -- and I've spoken to hundreds of
13 defendants, both who are my clients and who were consulting
14 with me in advance of potentially hiring me or whatever, is
15 that this is not the impediment to settling.

16 And what I fear and what I think is going to be
17 the case is that whichever party wins this issue, it's just
18 going to harden the position of that party entering the
19 settlement negotiations. I don't think it's going to be
20 this situation where the parties come together and say hey,
21 you know what, you were right. What I think is going to
22 happen -- and again, it's based on discussions I've had with
23 dozens or hundreds of defendants -- is that the position is
24 going to harden. If the litigation administrator wins on
25 this issue, I think we can expect the number to go up

1 dramatically. I don't think that raising the number
2 dramatically is likely to bring more people to the
3 settlement table, even if there's some indication that that
4 may be indicative of a final result after rounds of appeal
5 or whatever else.

6 What I think it's going to do is drive people away
7 from settling. And that's the concern that my group has,
8 and frankly that I have personally. I would like to see
9 these cases resolve as effectively as possible. And I
10 really do fear that a decision up front on an issue that is
11 not even ripe yet for determination before there's been any
12 opportunity for the defendants to put forth their defenses
13 is just not going to help the cause.

14 THE COURT: Okay. Mr. Romney?

15 MR. BESIKOF: Thank you, Your Honor.

16 THE COURT: Thank you, Mr. Besikof. Mr. Romney?

17 MR. ROMNEY: Good afternoon, Your Honor. Aaron
18 Romney with Lax and Neville. I represent several preference
19 defendants.

20 I'm going to tread very lightly, Your Honor.
21 Because what I came to say here relates strictly to the
22 546(e) issue, and I heard Your Honor --

23 THE COURT: We're not going to deal with 546 at
24 this point, I'm telling you right now.

25 MR. ROMNEY: Your Honor, may I briefly have the

1 Court's indulgence for 90 seconds to raise just a few
2 discrete points?

3 THE COURT: Go ahead.

4 MR. ROMNEY: My clients do not wish to seek any
5 discovery. They don't seek any expert reports or anything
6 beyond the four corners of the complaint. What they seek is
7 permission to file an ordinary 12(b)(6) motion based on the
8 four corners based on particular allegations that the
9 trustee has made that we believe bring this within the line
10 of cases where 546(e) has been --

11 THE COURT: We're not going to do it because I'm
12 not going to have 2,500 12(b)(6) motions. Okay. That's why
13 we're doing what we're doing, identifying common issues,
14 having them identified. You're not waiving your right to
15 make a 12(b)(6) motion, you're just not doing it now. I am
16 not going to have 2,500 12(b)(6) motions. I'm not going to
17 have a thousand 12(b)(6) motions. Okay. So next point.

18 MR. ROMNEY: Understood, Your Honor. Nothing
19 further.

20 THE COURT: All right. Mr. Vaughan?

21 MR. VAUGHAN: Yes, Your Honor. Christopher
22 Vaughan on behalf of certain defendants. Just a brief
23 comment, Your Honor, on the fees issue once again.

24 THE COURT: Yes.

25 MR. VAUGHAN: Mr. Hershey once again repeated the

1 argument from the previous hearing that the cases that they
2 cited were consistent with the fee schedule which they
3 proposed. As Your Honor recognized at the last hearing,
4 that simply is not true. All of the cases cited by Mr.
5 Hershey in his -- in the litigation administrator's motion
6 for streamlined procedures --

7 THE COURT: I didn't -- if you're saying that I
8 recognize it wasn't true, that's not correct.

9 MR. VAUGHAN: Oh, I'm sorry, Your Honor --

10 THE COURT: You could make the point, the
11 argument, but don't say that I recognized that the fees that
12 he proposed were not the current going rate in effect.

13 MR. VAUGHAN: Okay. Yes, Your Honor. I was
14 referring to an exchange at the last hearing. But my
15 apologies.

16 The fees cited by Mr. Hershey or the litigation
17 administrator in their motion for streamlined procedures all
18 included cases with less than 400 claims, two of them less
19 than 100 claims. So the fact that we maintain the same fee
20 schedule given the sheer number of mediations to occur here
21 is simply not consistent with precedent.

22 THE COURT: Okay. Mr. Weltman?

23 MR. WELTMAN: Yes, Your Honor. Thank you for
24 hearing me.

25 I raised the issue before and I want to raise it

1 again, the issue of the October 15th deadline. The reason
2 why I believe that it dovetails into the procedures motion
3 is that working with both clients and prospective clients
4 and co-counsel including Shannon Nelson, who has settled
5 (indiscernible) in probably more than a hundred cases and
6 has many clients and is very much into the settlement
7 process, has become aware of a situation shared with me
8 where we understand that the WPE valuation is a moving
9 target. We understand that the plan administrator has the
10 right to change the WPE calculation from the plan that was
11 filed and the disclosure statement that was filed. But we
12 understand further that there was some recent -- described
13 as miscalculations and recalculations of the settlement
14 amount very recently (indiscernible) question whether the
15 October 15th date is really the right date. If there are
16 issues with the WPE and the calculation of the WPE, and it
17 apparently is affecting more than one or two defendants, I
18 think it's incumbent upon Mr. Hershe -- and I appreciate his
19 efforts and I appreciate his cooperation and we've worked
20 very well with him and his team. But I think that the
21 October 15th deadline is certainly a target. It's not cast
22 in stone. And I think it should be extended to give the --
23 I think we should have a notice to the defendants in the
24 case where there is recalculation of the WPE as part of the
25 pre-October 15th settlement calculation, settlement

1 logarithm, to give them an opportunity to really understand
2 the calculations and have an opportunity to make an informed
3 decision. I think it's unreasonable to do that with the
4 deadline being one week.

5 THE COURT: Let me stop you for a second. Let me
6 stop you.

7 Mr. Hershey, the Jewish holiday calendar may not
8 affect very many people. It does affect me. This is a
9 chock-full month of holidays. It's the reason why I
10 extended the time to try and iron out the mediators until
11 Tuesday, October 29th. Are you willing -- I mean, I could
12 order it, but are you willing to extend this date, the
13 deadline until then? I don't know. Just give me time to
14 figure out what they're doing. Okay?

15 MR. HERSHEY: Absolutely, Your Honor. We'll file
16 a revised notice extending the deadline. We'll do the same
17 time, noon on the 29th.

18 THE COURT: Yes. Okay.

19 MR. HERSHEY: Thank you, Your Honor.

20 MR. WELTMAN: Your Honor, to start, I don't think
21 that the 29th gives us enough time. But I do appreciate
22 Your Honor's flexibility --

23 THE COURT: It is what you're getting. It's what
24 you're getting.

25 MR. WELTMAN: Thank you, Judge.

1 THE COURT: Okay.

2 MR. WELTMAN: I hear you.

3 THE COURT: All right.

4 MR. WELTMAN: For the other comments we will rest
5 on our papers. And we appreciate your recognizing that the
6 split should be reviewed. And the 60/40 split while it's
7 not --

8 THE COURT: I've already decided that one. So
9 let's just move on. Okay?

10 MR. WELTMAN: No, I understand. We were looking
11 for 75/25. But I --

12 THE COURT: Well, I know you were. And I gave you
13 60/40. Okay?

14 MR. WELTMAN: Thank you.

15 THE COURT: I'm very aware of the 75/25
16 suggestion.

17 MR. WELTMAN: Thank you, Judge.

18 THE COURT: Don't reargue a point -- maybe you'd
19 like to go back to 50/50.

20 MR. WELTMAN: Thank you, Judge.

21 THE COURT: Thank you. All right. Mr. Grinsell?

22 MR. GRINSELL: Thank you, Your Honor. Tim
23 Grinsell for defendant, Seth Dargo. My point relates to the
24 one you just spoke about. Our understanding was the August
25 27th discussion on the record involved you asking the

1 litigation administrator to reopen the settlement period
2 only to those who were not able to view the original
3 settlement offer. The litigation administrator filed a
4 notice reopening that period on the docket. We contacted
5 the litigation administrator in order to take advantage of
6 this reopened period and we received a settlement offer that
7 was 47 percent higher than the March 20th settlement offer
8 that was originally provided.

9 Our understanding is this is not consistent with
10 the Court's request and we wanted to bring this to the
11 Court's attention to --

12 THE COURT: Mr. Grinsell, I would never -- first
13 off, I don't inject myself into settlement discussions,
14 okay? Negotiate, settle, don't settle. But don't raise
15 with me that you're upset because the litigation
16 administrator raised a settlement demand. Okay? It usually
17 makes it hard to settle cases where that happens, but I'm
18 not getting involved in the settlement. There's going to be
19 a lot of good mediators and going to be a lot of issues that
20 may get briefed. My reaction is settle sooner rather than
21 later if you can before you have to bear any cost of
22 mediators. But I'm not -- your complaint that the
23 litigation administrator has upped the settlement demand is
24 made to the wrong person. Okay?

25 Mr. Davis?

1 MR. DAVIS: Thank you. Good afternoon, Your
2 Honor. For the record, Tommy Davis, WilmerHale, on behalf
3 of the DOF firm.

4 As Your Honor may have seen, the DOF Group is
5 designated as one of the briefing groups in the procedures
6 motion. As this is our first appearance, by way of
7 introduction, we're working with the DOF Firm, an Australian
8 firm that we understand has a large number of clients and is
9 gathering more, those clients are primarily though not
10 exclusively outside the United States.

11 Phil Anker will be lead counsel for Wilmer in this
12 case. He sends his regrets that he couldn't attend today,
13 as he is tied up in mediation.

14 Briefly turning back to the procedures motion,
15 you'll note that we did not file an objection to today's
16 motion. We have no problem with the revisions requested by
17 the Troutman and Lowenstein groups and we have no major
18 concerns with the proposal outlined in the motion and today.
19 We look forward to the mediation and briefing process. And
20 I have nothing further. Thank you, Your Honor.

21 THE COURT: Thank you, Mr. Davis. Anybody else
22 wish to be heard?

23 Mr. Jaspan? Ms. Jaspan, sorry. Didn't see your
24 first name. You're muted.

25 MS. JASPAN: I clicked. I guess it didn't work

1 the first time. Thank you, Your Honor.

2 Michele Jaspan of Falcon Rappaport & Berkman for
3 various objecting defendants. I just wanted to add one
4 issue related to the briefing. We respectfully request that
5 Your Honor -- and we're only suggesting. We haven't had a
6 chance to discuss it with Beskiof and Lowenstein group --
7 that there be some sort of directive if Your Honor is
8 inclined not to permit other firms to submit briefs on the
9 Phase One issues or Phase Two depending on how Your Honor
10 rules today on what is going to be briefed at the
11 (indiscernible) be kept informed in real time because we may
12 have additional suggestions or comments that we would like
13 to insert into the briefing that would not come before Your
14 Honor if we are not permitted to make submissions.

15 So whether there is some sort of agreement for
16 joint defense where we are included in real time with the
17 drafts or that we submit to the proposed briefing parties
18 our suggested insertions, whether they incorporate them into
19 their brief or whether they add them in as a -- and this has
20 been submitted by other counsel, but we would just like to
21 be able to have some mechanism to have our voices heard.

22 THE COURT: So, look, I've practiced law for 34
23 years. I had lots of cases. I was on the defense side more
24 than the plaintiff's side, but also on the Plaintiff's side.
25 In the large cases, we usually worked out understandings who

1 would take the lead at briefing, who would submit -- you
2 know, some understanding about a deadline after you see the
3 skeleton for a brief, if there are arguments that you think
4 also should be addressed, how you do it. I'm not going to
5 get into the nitty gritty of -- look, there's a lot of
6 cases, there's a lot of parties. It worked to your
7 advantage as well as -- and of your client. So you need --
8 I would urge that -- I'm not -- you know, there have been
9 several lawyers who have been most active so far, Ms.
10 Kovsky, Mr. Besikof. But there are others as well. Reach
11 out, arrange your call. Work out some understanding about
12 who is going to take the lead on which issues, when are
13 people going to submit either proposed additional arguments
14 to make or sections of a brief, et cetera.

15 I've got to rely on people on defendant's side to
16 work this stuff out. I agree that you should have an
17 opportunity to have your input. I don't want to find myself
18 with 200 separate briefs. That's not to anybody's
19 advantage. Okay. All right.

20 Mr. Hershey?

21 MR. HERSHEY: Thank you, Your Honor. I will be
22 extremely brief. It seems like there's really only one
23 issue in dispute, which is the Phase One damages issues. I
24 just want to make a few quick responses.

25 The first is, look, we have to be practical.

1 I am worried, Your Honor, that you may have frozen
2 again. You seem frozen on my screen.

3 CLERK: Judge? Right. I'll contact him.

4 MR. HERSHEY: Okay.

5 CLERK: Everyone, the Judge is attempting to
6 reconnect. Here he is.

7 THE COURT: All right. I apologize. I don't know
8 what's happening with my connection.

9 Mr. Hershey, do you want to pick up again?

10 MR. HERSHEY: Yes, thank you, Your Honor. No
11 worries at all. I'll be very brief.

12 So, look, we have to be practical. We are
13 entering soon enough a phase of mandatory mediation where
14 the litigation administrator is going to bear 60 percent of
15 the cost. I want those mediations to be productive and
16 successful. It is true that we settled 1,600 claims, not
17 preference actions. They were pre-litigation claims that we
18 settled. And that sort of speaks to the whole point here.
19 The reason we haven't settled with everyone else, and we
20 have 2,500 cases that are still before Your Honor, is there
21 are impediments to settlements being reached there that
22 didn't exist for the other people with whom we settled.

23 I will just speak for myself. It would be
24 incredibly helpful to me if Your Honor ruled on these issues
25 before mediation. I can guarantee Your Honor that my

1 approach to the mediations, my position in the mediations
2 will change based on how Your Honor rules. And if I lose,
3 my number will come down. I guarantee you it's true for
4 everyone else as well.

5 THE COURT: Okay. Mr. Hershey, we'll get to it,
6 but I've sort of decided what's going to be part of this
7 Phase One and we're going to get briefed. Okay?

8 MR. HERSHEY: Okay, Your Honor.

9 THE COURT: All right. So let me go ahead and
10 make some rulings.

11 First, Lax & Neville Group, Garcia, Falcon
12 Rappaport Group asked for permission to move to dismiss
13 before mediation. Denied.

14 The mediation fees I have already ruled changing
15 it to a 60/40 split.

16 There were -- I am looking at a chart I have. You
17 know, there were lots of objections filed. I have
18 considered every one (indiscernible) Lax & Neville Group,
19 Bressler, Garcia, Falcon Rappaport, all addressed the fees.
20 I am satisfied with the fees per case. It leaves -- for the
21 large group of cases there will be negotiation about it.

22 I would encourage you all to try and settle before
23 you get to any of this. It's going to obviate the issue of
24 paying for a mediator. But you will or you won't.

25 Garcia objected to mandatory mediation. Overruled.

1 There's mandatory mediation.

2 I have already ruled Valenzuela, Lax & Neville
3 Group, Troutman, Lowenstein Group, Falcon Rappaport, all
4 raised the issue about 546(e). I have already ruled on
5 that. We're not dealing with it, at least in Phase One.

6 The safe harbor defense remains a Phase Two issue
7 given the fact-intensive nature of the inquiry. And it's
8 really a question of first impression in crypto cases.

9 With respect to the 550 (a) issue, the litigation
10 administrator has made clear this really goes to the purely
11 legal question of whether it can request the return of
12 assets themselves. So long as it is limited to such, I do
13 not see why it shouldn't remain part of Phase One issue for
14 resolution before a mandatory mediation. While relief under
15 550(a) is contingent upon a finding of liability under 547,
16 it also requires the defendants be either "the initial
17 transferee of such transfer or the entity for whose benefits
18 those transfers were made" or "any immediate or mediate
19 transferee of such initial transferee", see Section 550(a).

20 With respect to the new value issue, the
21 litigation administrator has made clear it goes to how that
22 should be computed. The Bankruptcy Code defines new value
23 under 547(c)(4) as being "Money or money's worth in goods,
24 services, or new credit or released by a transferee of
25 property previously transferred to such transferee in a

1 transaction that is neither void nor voidable by the Debtor
2 or the trustee under any applicable law, including proceeds
3 of such property, but does not include an obligation
4 substituted for an existing obligation." Se Section
5 547(a)(2). Again, this is purely to determine how to
6 properly compute and would facilitate consistency as well as
7 mediation discussions. All right.

8 With respect to the issue of expert discovery,
9 Troutman & Lowenstein Group object that expert discovery
10 should have been completed before briefing for Phase Two
11 issues. The Troutman and Lowenstein groups have proposed an
12 alternative Phase Two schedule that allows parties to file
13 dispositive motions after the close of all discovery.

14 Then the litigation administrator response is that
15 the litigation schedule in Phase Two follows the discovery
16 schedule previously entered in this case requiring the
17 litigation administrator to file his expert report before
18 the defendants file their opening briefs deprives the expert
19 of the chance to review the defendant's opening briefs
20 before that expert issue his or her rebuttal report and
21 gives the defendant two bites at the apple by letting them
22 address the litigation and the administrator's rebuttal
23 expert report in both their opening brief and their reply
24 brief.

25 The objection is overruled for the reasons the

1 litigation administrator has articulated.

2 All right, with respect to defense briefs, the
3 limitation on quantity. The Falcon Rappaport Group has
4 argued that the provision of the motion which requires
5 parties to seek permission before filing briefs during
6 Phases One and Two is unfair and burdensome to parties who
7 were not members of larger groups of defendants. Defendants
8 not already permitted to file briefs should be allowed a
9 reasonable period to consider the (indiscernible)
10 submissions and decide whether to file joinders.

11 The litigation administrator's response was the
12 litigation administrator shares the Court's concern, which I
13 do have this concern, that allowing duplicative briefing
14 from defendants would make litigating these issues difficult
15 and inefficient.

16 The litigation administrator, in light of the
17 Court's advice during the August 27th omnibus hearing
18 proposes three groups of defendants that will submit three
19 opening briefs and three response briefs. All other
20 defendants may request permission to file briefs under the
21 same limits, which request shall be determined by the Court.

22 So the Court sustains in part and grants in part.
23 Sustains the objection part and grants in part and overrules
24 in part. The limitation on quantity of briefing would
25 assist in judicial economy and efficiency.

1 As this Court noted at the August 27th hearing,
2 common briefing is preferable and the Court therefore
3 overrules the objection as to the requirement to request
4 permission. However, the Court -- I do -- it's what I've
5 already said. With respect to the defense briefing, this
6 really requires coordination. And I'm going to leave it to
7 -- I am not going to pick who is going to lead the defense
8 group at this point. There have been certain counsel that
9 have sort of taken the lead in discussions, but I am not
10 precluding others from voicing it.

11 My suggestion is that you all arrange a conference
12 call in the next week and you hammer out some understanding
13 about how this is going to be done, who is going to be
14 taking the lead on various arguments, that they will be
15 circulated, people will have a chance to comment on it.
16 Again, I'm not -- you know, the Troutman (indiscernible)
17 group and the Lowenstein Group and the DOF Group
18 (indiscernible) and the (indiscernible) Group have been very
19 active so far, but I'm not -- I am not picking winners and
20 losers here. You all ought to be able -- every case --
21 every big case that I was involved in as a litigator on the
22 defense side with lots of defendants, lots of firms, within
23 two calls -- you know, now you can do it by Zoom. Back when
24 I was practicing, it was all conference calls. We worked
25 out understandings about who would take the lead on which

1 arguments and the opportunity for people to put in comments.
2 And I'm willing to take this into account in terms of
3 setting a final briefing schedule. Okay.

4 Your Honor, there was the Valenzuela defendants
5 have objected saying the Court should direct defendants to
6 present a single joint defense brief and any unique
7 arguments should be raised separately. Have your call
8 within the next week or so and try and work out how you're
9 going to do this. Okay? I would urge you -- I'm not
10 insisting. If you can agree, put it in writing among
11 yourselves. This is not something that the Court ought to
12 be resolving. You ought to be able to resolve as a group of
13 defendants. Some of you have a lot of clients, some of you
14 have fewer clients. You all ought to have an opportunity to
15 submit comments. They may or may not wind up in the final
16 brief. Okay.

17 Next, the issue about withdrawal of the reference.
18 I think that issue has been worked out. The litigation
19 administrator makes clear that nothing in the proposed
20 procedures inhibits the defendants' right to bring a motion
21 to withdraw the reference.

22 I think the Troutman and Lowenstein groups want to
23 consolidate for all pretrial purposes. Mr. Hershey says he
24 has no objection to doing -- work out the details how you're
25 going to do it.

1 The cases aren't consolidated on the merits,
2 they're consolidated for pretrial purposes. The better you
3 can coordinate, the better it will be for all of you. Okay.
4 I'm fully in favor of Ms. Kovsky, you and Mr. Besikof
5 working this out. Talk to Mr. Hershey to the extent you
6 need to do this.

7 The mediator list I've already said I want to get
8 the list down to ten. I want to give the defendants an
9 opportunity to get some names on that list.

10 Mr. Hershey, take the lead and see if you can work
11 this out. I gave until the 29th at noon to get this worked
12 out. If you can't, put your list and I'll ultimately decide
13 it. Okay.

14 MR. HERSHEY: Okay.

15 THE COURT: All right. Is there anything else I
16 need to deal with today?

17 Ms. Kovsky, your hand is raised.

18 MS. KOVSKY-APAP: Thank you, Your Honor. Just a
19 quick comment about the schedule for Phase Two briefing.

20 As Mr. Hershey had indicated earlier, that was an
21 objection that Mr. Besikof and I had raised. We spoke
22 before the hearing and we had come to agreement amongst the
23 three of us to actually push that issue because we don't
24 really know what Phase Two is necessarily going to look like
25 at this point. And I believe Mr. Hershey's proposal was

1 within 14 days after the conclusion of Phase One, we would
2 present a proposed schedule to Your Honor. And if we can't
3 work it out consensually, then ask the Court to rule on it.

4 THE COURT: I'm confident you're going to work out
5 the schedule.

6 MS. KOVSKY-APAP: Understood, Your Honor. One of
7 your rulings was specifically with respect to the schedule
8 and was an issue that we did not argue today because of the
9 agreement to kick the issue. So I wanted to make sure that
10 it was --

11 THE COURT: I'm fine with it. Okay.

12 MS. KOVSKY-APAP: Thank you.

13 THE COURT: Within 14 days after Phase One is
14 decided, you'll work out a schedule. I'm confident you
15 will. If you can't, I'll resolve it. Okay?

16 MS. KOVSKY-APAP: Thank you, Your Honor.

17 THE COURT: Mr. Hershey, anything else for today?

18 MR. HERSHEY: Nothing further, Your Honor. Thank
19 you very much.

20 THE COURT: Okay. Ms. Kovsky, Mr. Besikof, I'll
21 give anybody else a chance who wants. But anything else you
22 want to raise?

23 MS. KOVSKY-APAP: Nothing here, Your Honor.

24 THE COURT: Mr. Besikof?

25 MR. BESIKOF: Nothing from me, Your Honor. Thank

1 you.

2 THE COURT: Okay. Anybody else? I don't mean to
3 -- by calling on them specifically, I don't mean to exclude
4 the opportunity for anybody else to say something if they
5 wish.

6 Okay. I really would like -- I see Ms. Jaspan's
7 hand going up. But let me just say this. I really want to
8 get this all ironed out certainly by the 29th of October.
9 Okay? Go ahead, Ms. Jaspan.

10 MS. JASPAN: Your Honor, thank you. I just wanted
11 clarification on the ruling that Your Honor had said the
12 motion -- request for motions to dismiss denied. Was that
13 all motions to dismiss, Your Honor, whether it's lack of
14 personal jurisdiction, you know, there's a defense of
15 contemporaneous exchange of new value that I don't believe -
16 -

17 THE COURT: It is. I am excluding all motions to
18 dismiss. We're going to deal with the common issues that
19 have been agreed. I'm not going to find myself in the
20 position with thousands of 12(b)(6) motions. Okay? It's
21 just not going to happen. In my view, and that's the view
22 that counts, the most efficient way of handling this large
23 number of cases that raise common issues in the way we're
24 proceeding. You'll have your opportunity if you wish to
25 raise those issues.

1 MS. JASPAN: Thank you, Judge.

2 THE COURT: Anybody else want to be heard? Okay.

3 We are adjourned.

4 (Whereupon these proceedings were concluded at
5 4:17 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: October 10, 2024